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—*Amendment of Part 68*
CC Docket No. 78–331

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—*Depreciation Rates*

Deregulation

Request for permission to allow other AT&T affiliated entities to provide support services to fully separated subsidiary denied with minor exceptions. Some transitional sharing of services permitted during subsidiary's initial start-up period.

—*AT&T*

Equipment Registration Requirements

(See: Common Carrier, Equipment Registration Requirements—*Amendment of Part 68*)

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Common Carrier, Equipment Registration Requirements
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Equipment Registration Requirements
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Telephone Company, Customer-Provided Equipment

Petition for Reconsideration denied. Petitioner requested that Commission reconsider its decision not to create an exception for electric and gas companies and railroads to its Part 68 Equipment Registration Program. Commission found that petitioner did not demonstrate that the burden of the requirements is unreasonable or contrary to the public interest.

—*Amendment of Part 68*
CC Docket No. 78–331

FCC 82–528

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
Amendment of Part 68 of the Rules to provide for certain exceptions required to protect the national defense and security as well as other appropriate exceptions	CC Docket No. 78–331

MEMORANDUM OPINION AND ORDER

Adopted: December 2, 1982; Released: December 7, 1982

BY THE COMMISSION:

1. Before the Commission is a petition filed by the Association of American Railroads (AAR) requesting reconsideration of our *Memorandum Opinion and Order* in Docket No. CC 78–331, 44 Fed. Reg. 66825,

November 21, 1979.[1] That order, among other things, created an exception to the Part 68 equipment registration program (47 C.F.R. Part 68) for government agencies in instances where disclosure of equipment, locations or projects would compromise national security and defense; however, it declined to make a similar exception for electric and gas utilities and railroad companies which had historically been excepted from tariff provisions prohibiting interconnection of customer provided systems and equipment.

I. Background and Contentions

2. In response to decisions recognizing a basic consumer right to connect non-telephone company equipment to the facilities of local telephone companies,[2] the telephone companies began revising their tariffs to permit connection of customer provided equipment. Those revisions also included provisions requiring the interpositioning of carrier-furnished protective connecting devices between their facilities and all customer-provided equipment. At the same time, however, exceptions to this general requirement were carved out for certain entities that had historically been allowed to connect their equipment to the telephone network with few or no restrictions, *e.g.*, gas, oil, electric, and transportation companies, selected industrial firms, the Department of Defense (DOD), and customers in hazardous or inaccessible locations.

3. When connection of equipment through carrier-furnished protective connecting devices subsequently proved to be impractical and uneconomical,[3] this Commission instituted its equipment registration program. *See* Docket No. 19528, *First Report and Order*, 56 FCC 2d 593 (1975), and *Second Report and Order*, 58 FCC 2d 736 (1976). Under this program, a registrant is required to demonstrate satisfactorily that its equipment will not cause harm to the nationwide telephone network. Certain multi-line wiring operations were subsequently included in the program. *See Third Report and Order*, 67 FCC 2d 1253 (1978) and *Memo-*

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[1] The Department of Defense (DOD) supports certain portions of AAR's petition. The North American Telephone Association (NATA) and the American Telephone and Telegraph Company (AT&T) oppose the petition. Also before us are NATA's reply to DOD's comments, and AAR's reply to NATA's and AT&T's oppositions. The Utilities Telecommunications Council (UTC) also filed a petition for reconsideration in this proceeding. However, it now seeks to withdraw its petition. It states that after lengthy discussions with American Telephone and Telegraph Company (AT&T) representatives, and in light of the new tariffs governing the interconnection of private communications systems, most of its concerns pertaining to compliance with the registration program have been dispelled. Accordingly we will grant its motion.

[2] Hush-a-Phone Corp. v. United States, 238 F. 2d 266 (D.C. Cir., 1956); Carterfone, 13 FCC 2d 420, *recon. den'd*, 14 FCC 2d 571 (1968).

[3] In addition to the added cost, protective connecting devices also create a delay in the time it takes a signal to travel from one terminal to another. Even though the delay is only a fraction of a second, it may be enough to disrupt the synchronization of certain data terminal equipment.

randum Opinion and Order, 70 FCC 2d 1800 (1979). See also Section 68.125 of the rules, 47 C.F.R. § 68.215.

4. On June 5, 1978, AT&T sought to revise its Tariff F.C.C. No. 263 regarding customer premises equipment used in connection with Message Telecommunications Service (MTS) to bring the tariff into compliance with the registration requirements of Part 68. DOD requested that we suspend and investigate this tariff. It claimed, among other things, that compliance (that is, registration) would result in the public release of classified information in certain circumstances, thus compromising the national security and defense. We found merit in DOD's contentions and initiated a rulemaking. Further, on our own motion, we consolidated into this rulemaking the issue of whether Part 68 should be amended to recognize other special historical exceptions to earlier tariff requirements prohibiting interconnection of customer premises equipment. In the ensuing order for which reconsideration is sought, we granted a narrowly drawn exception to the registration requirements of Part 68 to government agencies in instances where they can verify that the equipment and systems they connect directly to the network will not cause harm and where disclosure of equipment, locations or projects would compromise the national security and defense. *See* Section 68.2(e) of the Commission's Rules, 47 C.F.R. § 68.2(e). However, we rejected adoption of other exceptions on the theory that to do so would weaken our Part 68 registration program, thereby creating the potential for harm to the telephone network in contravention of the public interest.

5. The gravamen of AAR's petition for reconsideration involves the imposition of the supervisory and affidavit requirements of Sections 68.215(c) and (e) of our Rules on its members.[4] In its comments filed in this rulemaking, AAR had argued that compliance with these rules would

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[4] The pertinent provisions of Section 68.215(c) and (e), 47 C.F.R. § 68.215(c) and (e), are as follows:

(c) Supervision: Operations by installation personnel shall be performed under the responsible supervision and control of a person who: (1) Has had at least six months of on-the-job experience . . . (2) Has been trained by the registrant of the equipment . . . (3) Has received written authority from the registrant to assure that the operation by installation personnel will be performed in such a manner as to comply with these rules; (4) Or, in lieu of paragraph (c)(1)–(3) of this section, is a licensed professional engineer. . . .

(e) Documentation requirements. A notarized affidavit and one copy thereof shall be prepared by the installation supervisor in advance of each operation . . . This affidavit and its copy shall contain the following information: (1) The responsible supervisor's full name, business address and business telephone number; (2) The name of the registrant(s) . . . (3) A statement as to whether the supervisor complies with § 68.215(c). . . . (4) The date(s) when placement and connection of the wiring will take place; (5) The business affiliation of the installation personnel; (6) Identification of specific national and local codes which will be adhered to; (7) . . . a brief description of the wire which will be used . . . (8) The date when acceptance testing for imbalance will take place; (9) The supervisor's signature.

The notarized original shall be submitted to the local telephone company at least ten calendar days in advance of the placement and connection of the wiring. This time period may be changed by agreement of the telephone company and the supervisor. . . .

create unreasonable operational hardships and unnecessary economic burdens in the form of additional paperwork and possible union demands for higher pay. In our order, we found AAR's arguments unpersuasive. Specifically, we determined that a recent amendment to Section 68.215(c) of the Rules to permit licensed professional engineers to supervise the interconnection of other than fully-protected premises wiring mooted the objections AAR had raised concerning the supervision requirements of that section. *See* 47 C.F.R. § 68.215(c)(4). In addition, we found that the amount of paperwork necessary to satisfy the documentation requirements of Section 68.215(e) had been greatly reduced by the Blanket Affidavit Procedure.[5] Thus we concluded that the objections raised concerning the affidavit requirement were moot as well.

6. On reconsideration, AAR essentially takes issue with our expectation that the use of licensed professional engineers and the Blanket Affidavit Procedure would alleviate the railroads' alleged difficulties complying with Section 68.215. First, AAR notes that railroads generally employ few licensed professional engineers and thus cannot take advantage of the Section 68.215(c)(4) professional engineer provision. According to AAR, the railroads' problem with the registration program lies in complying with Sections 68.215(c)(2) and (3), which require the supervisor of personnel installing registered equipment to be trained and certified by the registrant of the equipment. AAR argues that its members train their own personnel on how to install and maintain communications equipment and that this training is adequate to protect the network. Assertedly, the large number of personnel involved and the assortment of equipment types that may be installed make it too costly to send each supervisor to each registrant for training and certification.

7. Furthermore, AAR argues that despite the relaxed filing requirements of the Blanket Affidavit Procedure it is still difficult for its members to comply with Section 68.215(e). It claims that the wide geographic spread of railroad operations, the numbers of personnel and installations involved, and the variety of equipment used would require the filing of numerous lengthy affidavits that would need constant amendment. Finally, AAR renews its contention that the required submissions will result in union demands for higher wages, as well as additional paperwork.

II. Discussion

8. The registration requirements of Part 68 apply to all terminal equipment manufacturers and installers of multi-line wiring. In order to

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[5] See Public Notice 16384, released April 12, 1979. Under this Procedure, the supervisor makes the filing required by Section 68.215(e) once a year. Instead of listing the one piece or type of equipment to be installed, the supervisor may list all the types of equipment usually installed under his supervision. The local telephone company then issues the supervisor an identification number that is used to place a service request with the telephone company. This procedure negates the need for filing further affidavits.

maintain the integrity of the registration program we have not granted exemptions to Part 68 of the Rules absent a showing that there is a compelling public interest in doing so. Originally, the telephone companies argued that they should not be required to comply with Part 68. However, in rejecting their request, the Commission noted that "carrier-supplied terminal equipment possesses the same potential for harm to the network as does customer-supplied equipment." *First Report and Order*, 56 FCC 2d at 601. Thus, Western Electric, AT&T's manufacturing arm, is subject to the requirements of the registration program, just as any other terminal equipment manufacturer. To date, the only exemption to Part 68 has been that granted to certain federal agencies in accordance with the mandate of Section 1 of the Act, *i.e.*, for the purpose of national defense.[6]

9. Reduced to essentials, AAR's argument is that it is technically qualified to connect its own equipment and that the administrative burden on it to comply with Part 68 of the Rules is unreasonable.[7] However, a showing that a particular entity is technically capable of interconnecting its own equipment with the telephone network (or has done so in the past) does not in and of itself justify an exemption under our previously established public interest standards embodied in Part 68. Likewise insufficient is AAR's showing that its paperwork burden is unreasonable. At most in this regard, AAR has shown that its members' burden is perhaps greater than that of others. It has not demonstrated, however, that this burden is unreasonable or contrary to the public interest. Under these circumstances, we are still not persuaded to grant the railroads an exemption from Part 68 of the Rules.

10. Nonetheless, in so ruling, we have not ignored the fact that there are unique circumstances which the railroads must accommodate in complying with Part 68 of the Rules. Thus, as AAR points out in its petition, a single railroad may operate thousands of miles of track that pass through several states and more than a hundred separate telephone company jurisdictions. In addition, the personnel the railroads employ routinely install a large variety of equipment and are often transferred from one telephone company's jurisdiction to another. In point of fact, however, as we now explain, many of AAR's perceived problems concerning compliance with Part 68 flow from its misunderstanding of the requirements of Section 68.215(c).

11. Contrary to AAR's reading, the provisions of Section 68.215(c) do not require that all installation of equipment actually be supervised by

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[6] In granting that exemption, which is not under challenge here, we reiterated that the Part 68 program had never been intended to interfere with national security and defense, and that the government agencies involved were presumed to be competent to install and maintain their own telephone equipment and communications systems.

[7] At the very least, AAR contends, responsibility for complying with Section 68.215 should be shifted from the installers and maintainers of the equipment to the corporate level.

persons individually trained and authorized by the registrant. Rather, any properly trained and authorized supervisor may delegate on-site supervisory responsibilities to others who actually oversee the installation. In other words, the point of the section is not to require that each supervisor on every job site be trained and authorized to install the particular equipment, but rather to ensure that there be some qualified supervisor within the company to take full responsibility for the installation and maintenance work operations performed under his or her authority.

12. Furthermore, it follows from the above that AAR members' responsibilities with respect to filing affidavits under Section 68.215(e) and the Blanket Affidavit Procedure need not be as burdensome as AAR may be believed. Specifically, since Section 68.215(c) permits a company to designate one supervisor at the corporate level to be responsible for all installation and maintenance work, the same installation supervisor may file one affidavit for the entire company each year with each local telephone company. As stated, our concern is not that each individual supervisor be identified, but rather that there be some designated supervisor to take responsibility for documentation of equipment to be installed.[8]

III. Ordering Clauses

13. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by the Association of American Railroads IS DENIED.

14. IT IS FURTHER ORDERED, That the Secretary shall cause a copy of this order to be published in the Federal Register.

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

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[8] It may also be noted that the supervision requirements of Section 68.215(c) apply only to "unprotected" systems and premises wiring and not to protected and partially protected wiring. *See* 68.3(t). Although certain telephone equipment currently owned by the railroads may be "unprotected", in the past two years practically all new registered equipments have been in the "fully protected" category. To the extent the railroads will be installing such protected euqipment the supervision and documentation requirements of Section 68.215 would not be required. Moreover, we recently issued a Notice of Proposed Rulemaking proposing new alternatives to the supervision requirements of Section 68.215(c); if these proposals are ultimately adopted, they will ameliorate any residual problems which may remain. See, *Second Notice of Proposed Rulemaking and Order* CC Docket No. 81–216, FCC 82–495, released November 12, 1982, at paras. 58–76.

Deregulation
Subsidiary Company

Request for permission to allow other AT&T affiliated entities to provide support services to fully separated subsidiary denied with minor exceptions. Some transitional sharing of services permitted during subsidiary's initial start-up period.

—*AT&T*FCC 82–549

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of American Telephone and Telegraph Company
Report on Services to be Shared Between Fully Separated Subsidiary and Affiliated Companies and Associated Costing Methodology

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 1982; Released December 13, 1982

BY THE COMMISSION:

1. In a *Memorandum Opinion and Order*, 90 FCC 2d 184 (June 16, 1982) (*General Departments Order*), the Commission considered and in large part approved the American Telephone and Telegraph Company's (AT&T) proposal to share certain administrative services provided by the AT&T General Departments with its new subsidiary, American Bell, Inc., formed to provide enhanced services and customer premises equipment.[1] The Commission deferred consideration of the remainder of

[1] That approval was conditioned on the Commission's final acceptance of AT&T's accounting plan for shared General Departments services. Conditional acceptance of that plan was granted on July 1, 1982 by the Chief of the Common Carrier Bureau under authority delegated by the Commission. Acceptance was conditioned on a review of actual performance of AT&T's accounting system based on data generated during the first quarter of American Bell's operations. Letter from Chief, Common Carrier Bureau to Bless J. Stritar (July 1, 1982).

AT&T's sharing proposal to a later order. In this order we consider the remainder of AT&T's proposal for sharing services between American Bell and other AT&T affiliated entities.

2. AT&T's "Report on Services to be Shared Between Fully Separated Subsidiary and Affiliated Companies and Associated Costing Methodology" (Report) was filed on January 13, 1982 in response to the Commission's request for "a detailed description of any administrative services which it will share with the subsidiary, along with an explanation as to how the costs of any shared services are to be allocated between regulated and unregulated activities." *Further Reconsideration in Computer II*, 88 FCC 2d 512, 548–49 (1981) (*Further Reconsideration*). The sharing AT&T proposed in its Report covered a broad range of activities and involved several AT&T entities in addition to the General Departments. In a letter to the Chief of the Common Carrier Bureau dated October 13, 1982, AT&T modified its sharing proposal, reducing the level and duration of some of the proposed sharing, proposing changes to other parts of the proposal (including some areas previously considered in the *General Departments Order*) and adding a proposal regarding construction of a building for American Bell.[2]

3. The Computer II decisions provide that services may be shared between American Bell and other AT&T affiliated entities when the efficiencies to be gained by sharing outweigh countervailing regulatory considerations. See *General Departments Order*, paras. 4–10. Since the majority of AT&T's sharing proposals do not meet this standard of efficiency, we are denying, with some exceptions, AT&T's request to share the additional services described in its January 13, 1982 Report. We are mindful, however, of the transitional difficulties which may be present when a large and complex organization such as AT&T is restructured. We are, therefore, providing that certain functions may be shared during a transitional period. We are deferring, pending receipt of further information, consideration of AT&T's October 13, 1982 proposal to allow Bell Telephone Laboratories Incorporated (BTL) to supervise construction of a building to be used by American Bell.

I. AT&T's Sharing Proposals

4. In addition to the General Departments services, AT&T proposed in its January 13 Report that the 195 Broadway Corporation, the Administrative Services Department (ASD), the Bell System Operating Telephone Companies (BOCs), AT&T Long Lines Department (Long Lines) and Bell Telephone Laboratories, Incorporated (BTL) be permitted to

[2] Letter from Alfred A. Green to Chief, Common Carrier Bureau (October 13, 1982) (October 13 letter).

provide services to American Bell. Each of these organizations has its own separate accounting system.

5. The 195 Broadway Corporation is a wholly-owned subsidiary of AT&T. Its function has been to own or lease the real estate, buildings, furniture, motor vehicles, aircraft and other equipment used by AT&T's General Departments. It provides property management services such as lease, tax and insurance administration, maintenance and house services, safety and security services and porter services. It also provides food services, communications and transportation services, office planning, leasehold improvements, building alterations, moving and rearrangement services and design and construction services for the AT&T General Departments. AT&T proposed that 195 Broadway be permitted to make these services available to American Bell if requested. Report, A–21, A–22 and C–1.

6. The Administrative Services Department (ASD) is a division of the AT&T General Departments. It provides a variety of office support services to the AT&T General Departments and the 195 Broadway Corporation, and selected services to Long Lines, American Telephone and Telegraph International and the Advanced Mobile Phone Service, Inc. The services provided by ASD include mail and distribution services, procurement and distribution of office suppliers, reprographics, record keeping services (including technical liabrary services), calculating and time sharing services, clerical and secretarial services, conference and travel services and company communications services. In its Report, AT&T proposed that ASD be permitted to provide those services to American Bell, Inc. Report, A–25, A–26 and D–1.

7. In the October 13 letter, however, AT&T stated that ABI would actually provide for itself from the outset most of the 195 Broadway and ASD services. After January 1, 1984 these services would "be limited to services for its corporate headquarters personnel." AT&T estimated the value of those continuing services at less than ten percent of the amount originally proposed.

8. AT&T proposed in its January 13 Report that the BOC's, Long Lines and BTL provide medical, employment and employee evaluation and management services to American Bell. In addition, AT&T proposed that BTL provide education and training, technical library, and salary administration services to American Bell. Report, A–25, A–27 to A–29.

9. In its October 13, letter, AT&T added a proposal that American Bell employees be permitted to use the medical facilities of the Western Electric Company (WECo) when those facilities are geographically convenient. AT&T also sought approval for BTL to manage the construction of a building for American Bell. In addition, AT&T requested permission to use BTL attorneys on a transitional basis to provide patent legal services to American Bell.

II. The Comments and Pleadings

10. The comments[3] filed February 19, 1982 raised two primary objections to AT&T's proposal: first, they argued that AT&T's proposal was overly broad and included services not authorized for sharing by the Commission; and second, they argued that AT&T's proposals for accounting for shared services were inadequate. GTE, ADAPSO and SPCC questioned whether AT&T's sharing proposals were justified in terms of economies to be gained and commented that AT&T should be required to make that justification. IDCMA also commented on AT&T's lack of justification for the proposed provision of support services (buildings, leasing, house, transportation, word processing, secretarial and other services) and stated, "[E]ach of these amorphous classes of services would provide AT&T with a virtual license to misallocate costs." Furthermore, AT&T has not explained why the subsidiary cannot obtain these services from unaffiliated sources. No sharing should be permitted, IDCMA continued, unless AT&T demonstrated specifically why it was necessary and why it would not frustrate the underlying purposes of the rules established in the Computer II decision.

11. Motorola and ADAPSO stated that AT&T's proposal to share the real estate services offered by the 195 Broadway Corporation conflicted with the Computer II prohibition on joint use of owned or leased space. The purpose of that prohibition, Motorola stated, was to reduce the opportunity to cross-subsidize with respect to building and other real estate costs. CBEMA argued that many of the sharing proposals were more operational or marketing oriented than administrative, and were, therefore, prohibited.

12. Tymnet, GTE, SBS and MCI all noted that the Modification of Final Judgment (MFJ) agreed to by the Department of Justice and AT&T in settlement of the long-standing antitrust suit against AT&T may require modification of AT&T's sharing proposals.

13. AT&T responded, in Reply Comments filed March 11, 1982, that in its view any sharing not expressly prohibited in the Computer II decisions is permitted. Sharing of the services provided by the 195 Broadway Corporation and the Administrative Services Department, AT&T stated, was not prohibited in the Computer II decisions. Therefore, AT&T concluded, it is permitted. In addition, AT&T stated that the

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[3] The commenting parties were GTE Telenet Communications Corporation (Telenet), Southern Pacific Communications Company (SPCC), Motorola, Inc., Computer and Business Equipment Manufacturers Association (CBEMA), the Independent Data Communications Manufacturers Association, Inc. (IDCMA), Tymnet, Inc., the Association of Data Processing Services Organizations, Inc. (ADAPSO), Satellite Business Systems (SBS) and MCI Telecommunications Corporation (MCI). Comments relating specifically to AT&T's proposal for sharing of services provided by the AT&T General Departments were summarized in the General Departments Order and will not be repeated here.

accounting systems described for those organizations would fully protect against cross-subsidization.

14. AT&T argued that the MFJ would have little impact on its sharing proposals. It stated that the services proposed to be provided by the BOCs were minimal and would be available to the subsidiary only where BOC facilities (medical centers and employment offices) were located near subsidiary offices. If no BOC were in a position to provide the described services, AT&T stated, the subsidiary would have to make its own arrangements.

15. By letter dated March 22, 1982, the Chief of the Common Carrier Bureau requested additional information from AT&T about its sharing proposals. The letter pointed out that the full Commission must consider and approve any proposed shared services which have not already been approved. The letter requested that AT&T explain the need for sharing these additional services and any costs associated with that sharing. The letter also requested additional information on the relationships among the various AT&T affiliates and on AT&T's accounting proposals for shared services.

16. AT&T responded to the Bureau's information request on April 12, 1982. The responses included descriptions of the relationships among the various AT&T entities, more detailed explanations of the extent of the sharing proposed, the estimated dollar volume of that sharing, and more detailed descriptions of the accounting systems involved.

17. Comments on AT&T's responses were filed April 23, 1982 by CBEMA, ADAPSO, IDCMA, Tymnet and SPCC. The comments generally restated initial objections to the breadth of AT&T's proposal and the inadequacy of the accounting proposals. The AT&T responses, the commenters stated, do not resolve the underlying concerns regarding potential cross-subsidization or anticompetitive conduct. CBEMA argued that the fact that services may be provided "in support" of authorized services is not an adequate rationale for additional sharing.

18. ADAPSO stated that AT&T did not advance any legitimate showing of need for additional sharing. It offered only "vague assertions of convenience and the business needs of its subsidiary." ADAPSO pointed out the substantial competitive impact of AT&T's sharing proposal:

> AT&T proposes to recruit [American Bell's] new employees; to train those employees once they have been hired; to administer their salary, pension and retirement programs; to house them in AT&T-owned buildings; to buy their furniture; to provide their meals; to chauffeur them in AT&T-owned vehicles; to educate them in AT&T's libraries; to provide them with medical attention; to do their typing; to do their filing; to deliver their mail; to provide their supplies; to perform their xeroxing; to process their data; to provide them with security; and to represent them before Congress, the Commission, and the courts. [Footnotes omitted.]

ADAPSO Comments, 8–9 (April 23, 1982). The dollar volume of these services estimated for 1983 in AT&T's Responses ($46 million), ADAPSO

continues, is more than 97.9% of the firms in the computer service industry expect to earn in gross revenues. This extensive sharing, ADAPSO concludes, is mostly unnecessary and will result in an "unseparate subsidiary" which cannot be expected to eliminate cross-subsidization or misuse of technical and customer proprietary information or to assure equal access to bottleneck transmission facilities.

19. Tymnet commented that AT&T offered no explanation as to why the subsidiary cannot negotiate its own office leases, rent its own automobiles, hire its own secretaries and word processors, or provide its own mail services. All of these services are readily available from unaffiliated sources.

20. SPCC noted that the incentive to cross-subsidize cannot be controlled by accounting and auditing. Auditing will reveal only whether correct numbers are accurately recorded for a particular transaction and whether generally accepted accounting principles were adhered to, not whether the subsidiary is actually charged for all activities which benefit it.

21. AT&T responded to these comments April 30, 1982. AT&T pointed out that since the subsidiary is being split from an existing enterprise and its lines of business are not new, it needs "up and running" support services for at least some transition period. As an example, AT&T argued that it would be difficult for the subsidiary to find a headquarters building to house the one to two thousand employees who will be shifted from existing AT&T entities to the subsidiary on January 1, 1983. AT&T stated that its "preliminary investigation" indicated that no suitable existing facilities would be available and none could be constructed by January 1, 1983. Therefore, it was necessary to allow the 195 Broadway Corporation to provide the subsidiary with "corporate buildings" to fit its needs.

22. ASD services, AT&T stated, would be used only if requested by the subsidiary. AT&T stated that by requesting approval for sharing, it merely wished to preserve that option for the subsidiary. Services made available by other affiliates, AT&T stated, would be limited in scope and would pose no threat to the Computer II restrictions.

III. Discussion

23. In the *General Departments Order,* the Commission restated one of its major concerns regarding AT&T's entry into unregulated markets: when a single firm offers both regulated monopoly services and unregulated competitive services, that firm has both the opportunity and incentive to give its unregulated services a competitive advantage by loading costs more heavily on the regulated side where they can be recovered through the rate making process. The occurrence of such cross-subsidization not only imposes an unwarranted financial burden on the ratepayers

but disadvantages competitors by allowing the unregulated services to be priced below cost. *General Departments Order,* para. 4.

24. The Commission's decision to allow AT&T to offer enhanced services and CPE only through a separate subsidiary was made, in part, to minimize the potential for cross-subsidization and other anti-competitive practices. The separate subsidiary structure, the Commission found, would reduce the company's ability to engage in predation and cross-subsidization by reducing the extent of joint and common costs between the subsidiary and other affiliated companies. Accounting alone, although a fundamental and useful regulatory tool, could not accomplish this goal. *Final Decision in Computer II,* 77 FCC 2d 384, paras. 202–205, 210 (1980) (*Final Decision*).

25. The Commission, however, did not insist on total separation of the subsidiary from other affiliated companies. Where there were efficiencies to be gained in jointly performing some activities, the Commission stated, the companies "should not be precluded from capitalizing on them where countervailing regulatory considerations do not demand stringent separation." *Id.* para. 235. The Commission expressly permitted the sharing of accounting, auditing, legal services, personnel recruitment and management, finance, tax, insurance and pension services. Sharing such "administrative services" was conditioned on AT&T's development of an accounting system which would accurately reflect the subsidiary's share of the cost of these joint services. *Reconsideration,* para. 102; *Final Decision,* para. 255. Any additions to this list require Commission approval. *General Departments Order,* para. 15.

26. The sharing proposals under consideration here are nearly all beyond those which the Commission previously authorized for sharing in the Computer II decisions. Each must, therefore, be evaluated according to the balancing test established in the Computer II decisions, *i.e.*, whether the efficiencies to be gained by sharing outweigh the countervailing regulatory concerns.

27. A guiding principle in evaluating AT&T's proposals for additional sharing is that increased sharing which would result in unnecessary entanglement between regulated and nonregulated activities should be minimized to the greatest extent possible. Accordingly, in assessing the merits of AT&T's proposals we shall consider first whether AT&T has demonstrated a compelling need for sharing, demonstrated practical efficiencies or substantial cost savings. Against this showing will be balanced any countervailing regulatory considerations. These include whether a specific sharing proposal conflicts with the separation requirements of the Computer II decisions (*e.g.*, separation of operating facilities and personnel), the extent to which sharing increases the potential for cross-subsidization to the detriment of the ratepayer, and the extent to

which additional sharing would increase the complexity of the Commission's monitoring efforts.

A. *The 195 Broadway Corporation*

28. AT&T divides the services provided by 195 Broadway Corporation into three categories: "rent and house" services, "tenant request" services and transportation. Rent and house services include the provision and administration of all office space—construction of buildings, negotiation of leases for space and facilities, heating and cooling, maintenance, cleaning, building security, office planning, transportation, food services, shipping and receiving, and porter services. Report, A–21 and A–22. "Tenant request" services are similar to rent and house services but involve meeting special requests for services in addition to those normally provided. Report, A–22. AT&T describes the third category, transportation services, as the provision of "vehicular and air transportation," provision of "motor pool vehicles for use by employees in specific locations and automobiles, upon request, dedicated to a specific organization." Report, A–22; Responses, II–13. AT&T estimated the cost of these services to American Bell at $44,676,000 for 1983. Responses, II–9, II–12, II–13.

29. In its October 13 letter, AT&T reduced its request for sharing of 195 Broadway Services. AT&T stated that although 195 Broadway might provide some services to American Bell divisional headquarters locations on a transitional basis, American Bell would provide most of those services for itself at those locations from the outset. After January 1, 1984 American Bell would provide all of those services for itself, except for some services which 195 Broadway would continue to provide at American Bell corporate headquarters. AT&T estimated the value of these continuing services at less than ten per cent of the previous estimate. October 13 letter, 1.

30. AT&T's proposal for sharing services provided by the 195 Broadway Corporation raises several regulatory concerns. First, to the extent that the 195 Broadway Corporation will be obtaining property for American Bell which was originally obtained for use, in whole or in part, by regulated companies, questions will arise as to the proper valuation of that property. The accounting treatment prescribed for real estate, original cost, may tend to undervalue any real estate transferred to the subsidiary, particularly in the case of older property which may have experienced appreciation. Use by the subsidiary of real property, the costs of which have been subject in whole or part to rate base regulation, requires Commission scrutiny to assure that ratepayers are adequately protected. Because real property, in general, appreciates in value, a determination as to whether ratepayers are being adequately compen-

sated cannot be made by examination of the books of account. Verification as to the compensatory nature of a transaction must go behind the books and look at the merits of each situation.

31. Second, in addition to issues relating to valuation, sharing raises the potential for cross-subsidization of costs for specific services provided by the 195 Broadway Corporation. At present, the 195 Broadway Corporation provides services to the AT&T General Departments. The AT&T General Departments provide services to all AT&T affiliates, regulated and unregulated. The General Departments' costs, including costs of services provided by the 195 Broadway Corporation, must be allocated among all AT&T affiliates. Allowing the 195 Broadway Corporation to expand its role and provide extensive services to an unregulated subsidiary increases the potential for misallocation of costs to the disadvantage of ratepayers.

32. Finally, permitting sharing of 195 Broadway services would increase on a continuing basis the scope and complexity of the regulatory scrutiny required to separate costs between regulated and unregulated activities. It would involve the Commission in reviewing and monitoring a separate accounting system in addition to the accounting system for the AT&T General Departments. Although the accounting may well be relatively straightforward in that it involves mostly direct charges, it would involve a great number of transactions, large and small, which we would be required to monitor if sharing were permitted. In addition, the allocation of overhead costs would have to be monitored.

33. Weighed against these regulatory concerns is AT&T's stated need for sharing. AT&T did not attempt to support the need for sharing these services in terms of either cost savings or significant practical considerations. In response to the Bureau's question in its March 22, 1982 information request as to why sharing is needed, AT&T alleges only that it would be an "economic hardship" to attempt to duplicate 195 Broadway's expertise. This position must be evaluated in light of AT&T's past practices. In most instances AT&T has not used 195 Broadway to obtain other facilities for American Bell. Leases for other facilities to be used by American Bell have been negotiated on American Bell's behalf by BTL and Long Lines.[4] AT&T has proposed that BTL, not 195 Broadway, supervise construction of a building to house American Bell's Engineering, Design and Development Division. October 13 letter, 2. Furthermore, the 195 Broadway Corporation has, until now, provided its services only to the AT&T

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[4] The Commission's audit of AT&T's preoperational expenses on behalf of the subsidiary indicates that all leases for the subsidiary in the preoperational period were negotiated by either Long Lines or Bell Labs from third parties. Those leases were to have been assigned to American Bell following the Commission's approval of AT&T's initial capitalization plan for the subsidiary. Memorandum Opinion and Order, 90 FCC 2d 404, Appendix D, para. 114 (June 16, 1982).

General Departments. Other AT&T companies have made their own arrangements for building construction, leasing and related services.

34. Many of the services described as rent and house or tenant request services are those which are typically provided with any lease—heating, ventilating, maintenance and repairs, janitorial services. Others such as the transportation, food services and office planning services require no particular expertise and are of a type which could easily be obtained by contract from third parties.

35. We cannot conclude tha sharing of 195 Broadway services is warranted based on the record before us. AT&T has not demonstrated that efficiencies, if any, to be gained through sharing outweigh countervailing regulatory considerations. We are, therefore, denying AT&T's proposal to share with American Bell, on a long term basis, the services provided by the 195 Broadway Corporation.

36. We are aware, however, of the difficulties and short term dislocations which might occur when an organization such as AT&T is reorganized. Substantial numbers of employees will transfer to American Bell from other parts of the AT&T organization after January 1, 1983. These transfers may involve reallocation of existing building space and facilities. It would be reasonable for this reallocation to be managed on a company-wide basis. In the October 13 letter AT&T proposed that 195 Broadway provide some services to the American Bell divisional headquarters locations on a transitional basis during 1983, but that commencing January 1, 1984 such service would be limited to American Bell corporate headquarters personnel. In order to minimize potential transitional problems, we shall allow American Bell to use the services of the 195 Broadway Corporation on a transitional basis until January 1, 1984 for its divisional and corporate headquarters locations. Provision of all services by the 195 Broadway Corporation to American Bell must end by that date.

37. Accounting for shared 195 Broadway services for the interim period should be in accordance with the accounting plan submitted with AT&T's January 13, 1982 Report as expanded in AT&T's April 12, 1982 Responses to Information Requests. In addition, the costs of moving personnel for American Bell should be directly billed to American Bell and not charged as a loading. See *Memorandum Opinion and Order*, 90 FCC 2d 404, para. 60 (1982).

B. *The Administrative Services Department*

38. AT&T also proposes that American Bell be permitted to share services provided by the Administrative Services Department (ASD). Although ASD is a part of the AT&T General Departments, its accounting system is separate and distinct from the General Departments ac-

counting system. As noted above, ASD provides office support services to the General Departments and the 195 Broadway Corporation and selected services to Long Lines, AT&T International and the Cellular Mobile entity. The services AT&T proposes sharing with American Bell include a wide range of basic office support services: mail distribution, procurement and distribution of office supplies, word processing, secretarial, clerical, drafting and art, centralized reproduction, records and forms management, microfilm production, calculating, time sharing, conference, travel and audio visual services, and company communications.

39. In response to the Bureau's question on the need for sharing, AT&T stated that American Bell would determine the need; these services will be shared only if requested by the subsidiary. The need, AT&T stated, "as determined by the FSS, will be based upon an initial lack of resources and expertise to provide these services with its own staff during startup." AT&T stated that the "primary emphasis of the new subsidiary during the startup phase will be on the provision of personnel and operations to perform its primary work." The subsidiary, AT&T continued, might well make a business decision to purchase those services rather than provide them itself. It would purchase them from ASD only if they were available from ASD at an attractive price. Any sharing was expected to be temporary. AT&T stated that within three to five years, as American Bell matured, it would assume most of those functions for itself. Responses, III–7, III–8.

40. In the October 13 letter, AT&T reduced its ASD sharing proposal. AT&T stated that although ASD might provide some services to American Bell divisional headquarters locations on a transitional basis, American Bell would provide most of those services for itself from the beginning. All sharing of ASD services would end by January 1, 1984 except for some services which would continue to be provided at American Bell corporate headquarters. AT&T estimated the level of continuing services at less than ten per cent of the level originally proposed.

41. The regulatory concerns raised by AT&T's ASD sharing proposal are in certain respects similar to those raised by sharing of 195 Broadway services. The potential for improper subsidization exists and would increase the scope of regulatory scrutiny. Sharing would also increase the complexity of our monitoring efforts because ASD employs a separate and distinct accounting system from that utilized by the General Departments.

42. On a more fundamental level, however, broad scale approval of ASD sharing would appear to conflict directly with the Computer II structural separation requirements. The ASD services, under AT&T's proposal, would provide direct support for various operational facets of American

Bell's unregulated activities.[5] The underlying purpose of the Computer II separation policy, however, has been to separate the operations of the subsidiary from AT&T's other operations. The Commission's Rules provide that the subsidiary "shall operate independently in the furnishing of enhanced services and CPE," and that it utilize separate operating and marketing personnel. Rules § 64.702(c)(2). This separation was deemed necessary in order to avoid burdening ratepayers with costs which should be borne by the subsidiary and to prevent AT&T from conferring unfair competitive advantages on its subsidiary.

43. The requirement for separate operating personnel would be substantially undermined if, for example, ASD provided word processing, secretarial, or clerical services. Many of the other ASD services also directly support the day-to-day operations of the business enterprise and should be performed by American Bell. Only in the most compelling case should these services be provided by ASD to American Bell.

44. AT&T has not made such a case. In response to a specific invitation by the Chief, Common Carrier Bureau to justify the need for sharing, AT&T stated only that the subsidiary itself would decide whether it wished to purchase ASD services. AT&T presented no arguments that allowing American Bell to share ASD services would result in cost savings or that it would be impractical or inconvenient for American Bell to obtain those services elsewhere. Rather, AT&T is merely attempting to preserve for American Bell the option of purchasing support services from ASD if it so desires.

45. In light of the above, we cannot sanction direct ASD support of American Bell.[6] Sharing of ASD services would involve a prohibited mix of American Bell's operations with those of AT&T. American Bell may perform these services itself, or obtain them from unaffiliated entities. Based on the record to date, we find that denial of such sharing will cause no undue hardship to American Bell.

C. *The BOCs, Long Lines, BTL and WECo*

46. The final group of shared services proposed by AT&T in its January 13 Report are to be provided by the BOCs, Long Lines Department and

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[5] We are not considering here indirect ASD support for American Bell which might occur through ASD support of the General Departments administrative functions which the Commission has authorized sharing. *See* General Departments Order, para. 1, *supra*. ASD may provide support for those shared General Departments functions. The charges to American Bell for shared General Departments services must include an appropriate portion of any ASD support provided for those services.

[6] We note that part of the ASD proposal involves joint bulk purchasing. The Commission has not foreclosed bulk purchase savings. *Final Decision*, para. 255. In response to an inquiry from the Common Carrier Bureau, AT&T has stated that its joint bulk purchasing would be limited to "office supplies and printing". Responses, III-10. The cost of any such jointly purchased supplies should be allocated on a pro rata basis, including adequate overhead.

BTL. These services include medical services, employment and employee management services, staffing services, "Pioneer" activities, education and training, and salary administration. AT&T also mentions a technical library service to be provided by BTL.

47. In the October 13 Letter AT&T seeks approval for American Bell employees to use WECo medical facilities when they are geographically convenient, for BTL to provide patent legal services to American Bell on a transitional basis, and for BTL to manage the construction and related activities necessary to build a building to be occupied by American Bell's Engineering, Design and Development Division.[7]

48. We have no regulatory problem with shared "pioneer" activities. The "Pioneers" are senior AT&T employees and retirees who are involved in social and charitable programs. The amounts of money involved in Pioneer activities are small. The threat of damage to ratepayers or of violation of Computer II separation requirements is nil. These activities may be shared.

49. Nor do we prohibit American Bell employees from making use of BOC and WECo medical facilities, the costs of any such services to be directly charged to American Bell. These services do not involve direct support for American Bell's operations. These services have been shared throughout the Bell System in the past and will continue to be shared by the other AT&T companies. Sharing of medical services on a direct charge basis presents little risk to ratepayers.

50. AT&T has also proposed that BTL provide patent legal services to American Bell for a transitional period. We will allow this sharing as proposed. The Commission has already authorized sharing of legal services (*Reconsideration of Computer II*, 84 FCC 2d 50, para. 102 (1980)), and, in the *General Departments Order*, approved AT&T's proposal to share legal services through the General Departments. Patent law is, however, a highly specialized and technical area. It is, by its nature, focussed on specific technical projects. The appropriate segment of the company to be charged for patent law services should, therefore, be easily identifiable. BTL attorneys may provide these services to American Bell, on a direct charge basis for a brief transitional period as proposed by AT&T. This approval is conditioned on AT&T's presenting

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[7] We shall not here consider AT&T's request that BTL supervise construction of a building for American Bell. This proposal was presented to the Commission for the first time in the October 13, letter. Detailed support was not provided nor were the accounting arrangements for this proposal described. If AT&T wishes to pursue this proposal it should provide us with a more detailed explanation of the proposal, including a showing as to why such sharing is necessary and an explanation of the accounting arrangements. If AT&T provides us with this information we shall give the proposal our prompt attention. The Commission delegates to the Common Carrier Bureau the authority to review this proposal and any information presented in support of it and to authorize sharing if the proposal is acceptable. This delegation is restricted to the proposal first described in the October 13 letter.

and the Commission approving the details of its plan to directly charge American Bell for the cost of any such services provided. The Commission delegates to the Common Carrier Bureau the authority to review AT&T's plan and to authorize sharing to begin if the accounting plan is adequate.

51. AT&T proposes that the BOC's Long Lines and BTL engage in employee recruitment and management on behalf of American Bell. The primary difficulty with this proposal is the complexity it adds to our oversight of cost allocations and accounting. Each of the BOCs has its own accounting system. BTL and Long Lines both have their own accounting systems. If sharing were permitted as proposed, the Commission staff would have twenty-four additional accounting systems, complete with Budget Decision Package (BDP) establishment procedures[8] and cost allocation mechanisms, to review and monitor. Each would present the same problem of regulating discretionary management decisions described in the *General Departments Order* in connection with the accounting for the AT&T General Departments. While we have previously authorized sharing for personnel recruitment and management (see paragraph 25, *supra*), we are of the opinion that such sharing should be limited to the General Departments. In this manner our monitoring efforts can focus on a single accounting system. Moreover, many of these services, with little inconvenience to the subsidiary, may be performed in house or by arrangement with third parties. AT&T itself described this sharing as "minimal," to occur only where a BOC or Long Lines facility happened to be located near an American Bell location. Elsewhere, American Bell would make its own arrangements.

52. AT&T also proposes joint education, training, and salary administration with affiliated entities.[9] The subjects which AT&T proposes that American Bell be permitted to share include "general employee education," management skills, foreign languages, accounting, and "technical courses directed to improvement of employees' general technical skills." Responses, Att. V.G., p. 1. The Commission recognizes that providing in-house education and training for its employees is a common and legitimate function undertaken by many large corporations. In the case of AT&T and American Bell, however, shared in-house training raises unique problems. Education and training programs must not become a vehicle for circumventing our Computer II rules with respect to the disclosure of information relating to AT&T's underlining transmission network flows.[10]

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[8] BDPS are the building blocks of the General Departments budget. A BDP represents a grouping of section activities and their associated costs. Establishment of BDPs is highly discretionary with individual AT&T section managers and is of critical significance to proper allocation of costs. *See* General Departments Order, paras. 56–63.

[9] With respect to salary administration, BTL is a participant in research and salary surveys, which include non-Bell companies.

[10] See Section 64.702(d)(2) and (3) of the Commission's Rules. In recognition of this problem, AT&T filed a memorandum dated March 29, 1982 by an official of Bell Telephone Laboratories instructing BTL to insure that "no technical instruction or materials utilized in courses" given by BTL to the employees of the subsidiary "include subject matter subject to information flow restrictions under the FCC's Computer Inquiry II rules." Responses, Attachment V. G, p. 2.

53. Obviously, some courses would present no threat of violation of the Computer II information flow prohibitions. For others, however, the threat could be substantial. The regulatory problem of separating the courses which would violate the information flow prohibitions from those which would not could be substantial. At a minimum, the need for continuous monitoring of course offerings to assure that no violations occur must be avoided.

54. AT&T has recognized that American Bell will be responsible for in-house training in many areas from the outset. *Id.* American Bell will be from the beginning a substantial company with up and running lines of business and will be well able to conduct its in-house training program independently of AT&T. Rather than establish a blanket prohibition on joint education and training courses, however, we believe that reasonable guidelines can be established that will adequately protect our Computer II concerns. Accordingly, we conclude that American Bell may participate in Bell System education and training programs subject to the following guidelines. First, any course which an American Bell employee participates in must be open to other employees of Bell System affiliates. Second, each sponsoring organization must be charged on a non-discriminatory basis based on the number of employees participating in a given training or education program. Finally, American Bell employees may not participate in any technical courses offered by affiliates relating to network design, network interconnection, computer design, computer programming, or any subject matter subject to the information flow restrictions of computer II.

55. With respect to the technical library service, we note that it can be available to American Bell even if no sharing is authorized. AT&T states that BTL's library has sharing arrangements with national information networks by virtue of its membership in the On Line Computer Library Center, Inc. (OCLC), which coordinates sharing of approximately 3,000 corporate, university and public libraries. Responses, V–11; Reply Comments, 9–10 (April 30, 1982). American Bell, as a substantial high technology company, will undoubtedly establish a library of its own. It could, therefore, participate in this inter-library loan service on the same basis as any other third party. All of the information which AT&T proposes to share in this way is readily available, published information which would be available to the inter-library loan service. Responses, V–12. We shall allow American Bell to share OCLC library services through BTL for a transitional period, to allow American Bell time to establish its own library and gain its own membership, if it desires, in OCLC.

56. AT&T has proposed that the subsidiary participate with BTL in the "administration of graduate study program." As to the graduate study program, it appears that AT&T has simply proposed to use BTL as a conduit to funnel to colleges and universities the tuition and other pay-

ments for courses taken by employees of the subsidiary. As AT&T has stated, it is perfectly feasible for the subsidiary to pay the universities directly.[11] In view of the limited benefits to be derived from the sharing—none are shown in any of the filings—and the burden it would place upon AT&T and the Commission's auditors to verify that payments were proper and adequately loaded, we see no reason why American Bell should not pay directly for its graduate study activities.

IV. Billing Procedures and Reporting Requirements

57. AT&T's final request in its October 13 Letter was for Commission approval to "change the method by which timing of ABI payment for administrative services provided by the AT&T General Departments is matched with timing of incurrence of expenses." Under the plan accepted by the Commission, AT&T bills American Bell each month for estimated current month expenses. The estimates are adjusted when actual expenses are available. AT&T now proposes that actual amounts be billed and that the bill include a loading[12] to compensate AT&T for use of its funds between the time the costs are incurred and the time payment is due. The Commission has already approved this method, AT&T states, with respect to shared installation and maintenance services. Using it for shared administrative services, AT&T states, would simplify adminstration. We approve this change in billing procedures.

58. Finally, we note that the monthly statements of administrative transactions between American Bell and AT&T on its affiliates required in the General Departments Order, paras. 66–67, should be expanded to include services authorized for sharing in this order.

V. Conclusion

59. In this order we have considered AT&T's proposals for increased sharing between American Bell and Bell System affiliates. The philosophy on which our analysis has been based is that the scope of sharing should be minimized where the need for sharing is not outweighed by other regulatory considerations. In the instant proposals, AT&T has not made a compelling case for increased sharing. Accordingly, based on the record to date, we are denying its proposals, with minor exceptions noted above. If AT&T were in the future to demonstrate a compelling need for specific sharing based on well-founded economic or practical considera-

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[11] Letter from Alfred A. Green to Chief, Common Carrier Bureau (April 30, 1982).

[12] The loading factor which AT&T is using in billing for shared installation and maintenance services represents an "approximation of the return on working capital and is based on the prospective cost of capital, grossed up for appropriate income taxes." Agreement Between BOC and American Bell, Inc. for BOC Installation and Maintenance of Business Customer Premises equipment, filed October 7, 1982, p. 14, Appendix 5.

tions, we would, of course, consider it. Absent such a showing, however, the regulatory concerns set forth in Computer II must prevail.

VI. Order Clause

60. IT IS THEREFORE ORDERED that those parts of AT&T's Report on Services to be Shared Between Fully Separated Subsidiary and Affiliated Companies, and Associated Costing Methodology describing services to be shared between American Bell, Inc. and the 195 Broadway Corporation, the Administrative Services Department, the Bell System Operating Telephone Companies, AT&T Long Lines Department, and Bell Telephone Laboratories, Inc. ARE REJECTED except as otherwise noted herein.

FEDERAL COMMUNICATIONS COMMISSION
William J. Tricarico *Secretary*

Depreciation Rates

Commission approved modified depreciation rates for eighteen domestic telephone companies consisting of eleven AT&T, six GTE and one Continental affiliate(s). These rates are based upon the Straight Line Equal Life Group (SLELG) methodology approved by the Commission in its Report and Order in Docket No. 20188, 83 FCC 2d 267 (1980), Reconsideration, 87 FCC 2d 916 (1981).
—Depreciation Rates

FCC 82–576

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

The Prescription of Revised Percentages of Depreciation pursuant to Section 220(b) of the Communications Act of 1934, as amended for:
American Telephone and Telegraph Company, Long Lines Department
The Chesapeake and Potomac Telephone Company
The Chesapeake and Potomac Telephone Company of Maryland
The Chesapeake and Potomac Telephone Company of Virginia
The Chesapeake and Potomac Telephone Company of West Virginia
Illinois Bell Telephone Company
Indiana Bell Telephone Company, Incorporated
South Central Bell Telephone Company
Southern Bell Telephone and Telegraph Company
The Southern New England Telephone Company
Wisconsin Telephone Company

ORDER

Adopted December 22, 1982; Released December 30, 1982

BY THE COMMISSION:

I. Introduction

1. Section 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. §220(b), states that the Commission shall, as soon as practicable, prescribe classes of property for which depreciation charges may be included in operating expenses and the percentages of depreciation which shall be charged to each of the classes. It also states that the Commission may, when it deems necessary, modify the classes and percentages so prescribed.

2. By this order we prescribe revised percentages of depreciation (depreciation rates) for the eleven Bell Operating Telephone Companies (BOTC's) listed above using the straight line equal life group (SLELG) method.

II. Background

A. *Straight Line Equal Life Group Method*

3. In FCC Docket No. 20188, 83 FCC 2d 267 (1980), *reconsideration*, 87 FCC 2d 916 (1981), we amended our rules to permit the use of the SLELG depreciation method for new additions to plant as an alternative to the straight line vintage group (SLVG) method, provided that adequate data is available for the proper application of the method.

4. The primary differences between the SLELG and SLVG methods lie in the definition of the basic depreciation groups and in the approach each takes in spreading the original cost of assets comprising the basic groups over their estimated average service lives. While SLVG forms its basic groups by combining all units placed in one year (i.e., a vintage group), SLELG creates its basic groups by combining all units within each vintage group which share an equal life expectancy (i.e., an equal life group). While the SLVG method is designed to depreciate 100% of the original cost of a vintage on average over the life cycle of each vintage, the SLELG method is designed to depreciate 100% of the original cost of each plant unit over its life. As a consequence, if projections are accurate, the SLELG method should allow for depreciation at a rate more representative of the actual consumption of units of property than SLVG. We concluded in Docket No. 20188 that the proper application and monitoring of this method would not only enhance the carriers' cash flow and present to all interested parties a more accurate and objective financial picture of the carriers' operations and capital requirements, but would also benefit their customers by encouraging innovation and the introduction of new technology.

5. Under both the SLVG and SLELG methods, retirement projections, service life estimates, and depreciation rates are normally determined, in part, through the use of survivor curves. These survivor curves define the relationship between the age of plant investment and the relative percentage expected to remain in service. Under the SLELG methodology, the survivor curves assume an added significance—that of defining the basic (equal life) groups. Under the SLVG method, most survivor curves have been selected only after the staff has completed detailed statistical analysis of historical retirement data. With the added significance of the survivor curves in the SLELG method, the availability and analysis of historical retirement data becomes even more important.

6. We recognized the importance of adequate data in Docket No. 20188 where we found that the SLELG method is acceptable, provided that:

> ". . . it is assured that adequate data is available for proper application of the method; that record keeping and reporting practices will enable monitoring of the reasonableness of the rate of allocation of both original cost and provisions for salvage and removal; that such allocation of original cost will achieve allocation over the service life of the property neither more nor less than 100% of the investment net of salvage value."

Accordingly, we directed the staff to take such measures as may be necessary to insure the measurability and accountability of the results under the SLELG method.

7. We further directed the staff to phase in the implementation of SLELG depreciation rates beginning with the outside plant accounts, followed by the central office equipment accounts and concluding with all other plant accounts. In accordance with this directive, this year the staff reviewed SLELG rates for the outside plant accounts for all of the BOTC's. As a result of that review, we adopted SLELG rates for new additions to most of the outside plant accounts for fifteen of these companies in July (*see* FCC 82–353, 90 FCC 2d 964 (1982)) and for nine additional companies in December (*see* FCC 82–542, Mimeo No. 32468). Our findings and conclusions regarding the SLELG rates for AT&T Long Lines' outside plant accounts are discussed below (see paragraph 26 ff). With the adoption of this order, the prescription of SLELG rates for the outside plant accounts is complete for the Bell System.

8. This year the staff also reviewed SLELG rates for the central office equipment accounts for most of the BOTC's. As a result of that review, we adopted SLELG rates for new additions to most of the central office equipment accounts for nine of these companies in December (*see* FCC 82–542, Mimeo No. 32468). Our findings and conclusions regarding the SLELG rates for ten of the eleven BOTC's listed in the caption of this proceeding are discussed below (see paragraph 26 ff).[1] With the adoption

[1] AT&T Long Lines is scheduled for a complete review of depreciation rates in 1983; as a result, it did not file for SLELG rates for central office equipment this year.

of this order, the prescription of SLELG rates for the central office equipment accounts is complete for the BOTC's which have requested such rates.

B. *Review Procedures*

9. Since the late 1940's, the Commission has reviewed and prescribed the depreciation rates of approximately one-third of the larger FCC-subject telephone companies each year. In most cases we have prescribed rates for a carrier only after the following actions have been completed:

(1) Submittal of depreciation studies by the carrier.
(2) Staff review of the carrier's filings and studies in support of its proposed life and salvage factors.
(3) Independent staff analysis of such information as the carrier's plant mortality data and equipment retirement plans.
(4) Preparation of preliminary staff recommendations.
(5) Discussion of the carrier's filings and the preliminary Commission staff proposals at a conference in which representatives of the carrier and the staffs of the respective state commissions and the FCC participate (i.e., a three-way meeting).

10. During the past year, in addition to the filings in conjunction with the staff's normal triennial represcription cycle, we received SLELG proposals from the BOTC's listed in the caption of this proceeding. The need to resolve the issues raised by these filings in a timely manner required the staff to depart from its traditional procedures. Because it was apparent that there were insufficient staff resources to allow the complete review of life and salvage factors for the carriers requesting SLELG rates, the staff chose to omit portions of steps 2 and 3 above and instead use the life and salvage factors which underlie currently prescribed rates. In addition, time and resource constraints precluded the discussion of SLELG rates with the carriers and respective state commissions at three-way meetings. Instead, comments regarding the carrier filings and preliminary staff proposals were solicited from the carriers and respective state commissions via correspondence and telephone conversations.

11. On August 13, 1982, the staff sent review letters to the BOTC's and the respective state commissions outlining its assessment of the BOTC's SLELG studies and its own recommendations for SLELG rates. Comments were solicited from the carriers and the respective state commission regarding the carrier and FCC staff recommendations. Subsequently, in September the BOTC's formally filed for SLELG rates for the central office equipment accounts. At that time, six BOTC's whose depreciation rates are scheduled for review in 1983 notified the staff of their intention not to file for SLELG rates for central office equipment. The staff analyzed the BOTC filings and arrived at its recommendations and,

on October 12, 1982, issued a public notice (Report No. 2969) entitled, "Depreciation Rate Prescriptions Proposed For Domestic Telephone Companies." This public notice summarized the FCC staff's proposals for revised depreciation rates and the change in depreciation expense that would result if those proposed depreciation rates were approved. On October 13, 1982, the staff transmitted to each company and respective state commission a copy of the October 12 public notice, schedules containing the proposed SLELG rates and the staff analysis underlying the proposed SLELG depreciation rates.

III. Summary of Comments

A. *August 13, 1982 Review Letters*

12. Responses to the staff's August 13, 1982, review letters were received from AT&T, each of the BOTC's whose rates are under consideration here, and two of the BOTC's who decided not to file for SLELG rates this year. In addition the following state commissions responded: Indiana, Iowa, Kentucky, Louisiana, Maryland, Mississippi, North Dakota, South Carolina and Virginia.

13. AT&T, the BOTC's, and the Indiana and Mississippi commissions were in substantial agreement with the FCC staff position that SLELG rates should be used. On the other hand, the Iowa, Kentucky, Louisiana, Maryland, and Virginia commissions were opposed to the use of SLELG rates. The North Dakota and South Carolina commissions did not state whether they supported or opposed the use of SLELG rates.

14. AT&T, the BOTC's and the Indiana Commission agreed with most of the SLELG rates proposed by the FCC staff; however, they disagreed with the FCC staff position that SLELG treatment should not be allowed for the COE-Step-by-Step and COE-Crossbar accounts on the grounds that they are "dying" accounts that will be almost fully retired within a few years. AT&T stated that, although these are "dying" accounts, significant investment will be added to these accounts over the next several years and that remaining-life rates would provide first year accruals of only one-half those provided by SLELG rates. AT&T also asserted that its detailed retirement plans for these accounts provide a sound basis on which to determine SLELG depreciation rates. Additionally, it stated that the FCC, in approving the SLELG method, left room for judgment as to what constitutes adequate data, and that, in the exercise of this judgment, weight should be given to the Commission's decision that SLELG is a preferred method. AT&T also contended that the use of the SLELG method in "dying" accounts is important in that it helps prevent the deferral of capital recovery beyond the physical life of the property. AT&T also stated that the FCC staff's proposals regarding future net salvage and interim retirement patterns warrant further

investigation. Finally, AT&T stated that the life estimates underlying currently prescribed rates for COE-ESS are too long.

15. The Mississippi Commission also generally agreed with the use of SLELG rates; however, it stated that additional information would have to be reviewed before it could form an opinion as to the appropriateness of the staff's proposed curve shape for COE-Electronic.

16. The Kentucky Commission stated that it does not believe the use of SLELG is necessary in order to provide adequate capital recovery. It stated that the use of the remaining-life technique will allow proper recovery, but that, if SLELG rates are to be used, the rates proposed by the FCC staff are appropriate. The staff of the Kentucky Commission also endorsed the FCC staff's proposal to continue to use the remaining-life method for the COE-Step-by-Step and COE-Crossbar accounts. It stated that retirement dispersion patterns for these "dying" accounts could not be determined for new additions in these subaccounts, and that, therefore, SLELG rates could not be properly implemented.

17. The Iowa Commission had no comments regarding the proposed changes in depreciation rates for Northwestern Bell Telephone Company's interstate operations; however, it stated that it would retain exclusive jurisdiction over the establishment of depreciation practices for the intrastate operations of Northwestern Bell Telephone Company and that it, therefore, did not concur in such changes for the intrastate plant in Iowa. The Louisiana Commission stated that it has not authorized South Central Bell to use the SLELG method for intrastate ratemaking purposes. The Maryland Commission contended that the benefits associated with the SLELG procedure are illusory because estimated service lives will always be inaccurate and, therefore, proper matching of capital consumption and recovery will not occur. It also claimed that SLELG depreciation methods have not been shown to be superior to the SLVG procedure. The Virginia Commission reiterated its comments made in response to an earlier public notice; i.e., that SLELG is neither necessary nor in the best interests of Virginia telephone companies or customers.

18. The North Dakota Commission stated that it believed Northwestern Bell would not file for SLELG rates for central office equipment until 1983, and that it would reserve comment until the filing.

19. The South Carolina Commission stated that it was concerned about several assumptions made by the staff as well as the underlying methodologies the staff used. It requested that the FCC postpone consideration of the implementation of SLELG for central office equipment in South Carolina until after the scheduled three-way meeting in 1983. It stated that the three-way meeting is the appropriate forum for a complete enunciation of all its concerns and alternative proposals.

B. *October 12, 1982 Public Notice*

20. Responses to the staff's October 12, 1982 public notice were received from AT&T and the staffs of the Louisiana, Maryland and Virginia commissions.

21. AT&T and the Maryland and Virginia commissions reiterated their earlier comments in response to the staff's August review letters (see paragraphs 14 and 17). AT&T again stated that it supports the staff's proposals with the exception of the denial of SLELG treatment for the COE-Step-by-Step and COE-Crossbar accounts. Virginia expressed the concern that its comments with regard to AT&T's SLELG filings for outside plant were dismissed without sufficient consideration in FCC Order 82–353, *supra*. The Virginia Commission also questioned why our staff requested comments when we have already stated that the question of whether or not the SLELG method should be used was decided in Docket No. 20188.

22. AT&T Long Lines stated that it did not request SLELG treatment for accounts in which it did not maintain vintage retirement data. In addition, it agreed with the rates proposed by the staff in the October 12, 1982 public notice.

IV. Discussion of Issues

A. *Use of SLELG*

23. In our decision in Docket No. 20188, we considered the arguments expressed by the parties for and against the use of the SLELG method and determined that the use of SLELG rates is appropriate, provided adequate data is available. In the discussion in the Final Report and Order, we found that the use of SLELG comports with the mandate of Section 1 of the Communications Act, "to make available . . . a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . ." 47 U.S.C. §151. We reaffirmed our decision allowing the use of SLELG in our Order on Reconsideration as well as in five prescription orders approved this year (viz., FCC 82–53, 88 FCC 2d 1567 (1982), FCC 82–353, *supra*, FCC 82–354, 90 FCC 2d 997 (1982), FCC 82–542, Mimeo No. 32468, and FCC 82–543, Mimeo No. 32469). Nevertheless, several states have again questioned whether the use of SLELG rates is warranted. Inasmuch as these states have not raise any new arguments or evidence regarding the use of SLELG rates, we have no basis to reverse our decision on this matter. Our rules, as amended in Docket No. 20188, clearly allow the use of SLELG for accounts in which adequate data is available to properly apply and monitor it. Therefore, we will allow its use.

24. Although the Virginia Commission is correct that the issue of whether or not the SLELG method may be used has already been decided, this does not mean that it was meaningless to solicit comments.

The primary purpose of the October 12, 1982, public notice was not to bring into question our rules, which clearly allow the use of the SLELG method, but rather to solicit comments regarding the effective dates proposed by the carriers and the life and net salvage factors that were under consideration for use in determining SLELG rates. Virginia did not respond to these issues. However, several respondents did and their comments are considered in this order (see paragraphs 26–28).

B. *Preemption of States*

25. Several state commissions stated that they have not approved SLELG procedures for their jurisdictions. The presence or absence of state commission approval of SLELG rates does not control the prescription of SLELG rates in this order. The prescription of depreciation rates is plainly a matter within the Commission's jurisdiction under Section 220(b) of the Communications Act. We have today ruled that such depreciation orders are binding at both the federal and state levels. *See* Amendment of Part 31, FCC 82– , Mimeo No. (adopted December 22, 1982).

C. *Life and Net Salvage Factors*

26. Our staff has stated that SLELG rates should be based upon the life and salvage factors determined in conjunction with the staff's last complete review of these companies' rates, because these companies are not scheduled for a complete review of depreciation rates until 1983 or 1984, and staff resources did not permit a complete review of life and salvage factors this year. In the October 12, 1982 public notice, the staff clearly stated its preference for the use of current life and salvage factors, and there were no comments to the contrary in response to that public notice. Furthermore, the BOTC's agreed with the staff and filed for SLELG rates based upon the factors determined in the last complete depreciation rate review. In this instance, we find that the benefits derived from implementing the new methods in a timely manner outweigh any advantages that may be derived from improving the precision of the estimates through the preparation and review of new studies of life and salvage. Furthermore, any inaccuracies that may result will be identified and resolved in the regularly scheduled reviews in 1983 and 1984.

27. The South Carolina Commission contended that SLELG rates should not be prescribed until it has had an opportunity to discuss the rates at a three-way meeting. We agree with South Carolina that it would be preferable to prescribe rates only after all the steps outlined in paragraph 9 are completed; however, we believe that the completion of all the steps outlined in that paragraph would have resulted in an unacceptable delay in the implementation of SLELG rates. We, therefore, believe the staff's departure from the traditional review procedures (i.e., es-

pecially the decision not to hold three-way conferences) was justified. Furthermore, we find that, with the staff review letters having been sent to the carriers and respective state commissions in August and with the public notice having been issued in October, South Carolina and all other parties had a reasonable opportunity to review the company and FCC staff proposals and submit their views for our consideration.

28. In FCC 82–353, *supra*, we pointed out that, when there is a strong relationship between the age of retirements and net salvage, future net salvage estimates for embedded plant do not apply to future additions of plant. In the companies' most recent depreciation studies for the COE-Circuit and COE-Radio accounts, net salvage percentages and the age of retirements were demonstrated to be highly correlated. As a result, the future net salvage estimates used in determining the remaining-life rates for embedded plant are not appropriate for use in determining SLELG rates for new additions to plant. The staff analyzed these accounts and made the necessary adjustments to convert future net salvage factors originally derived for embedded plant to future net salvage factors for use with new additions to plant. The proposed adjustments were provided to the carriers and state commissions in October, and no responses objecting to these proposals were received. Therefore, we support the staff's proposals for SLELG future net salvage percentages in these accounts.

D. *Accounts for which SLELG Rates are not Recommended*

29. In our final decision in Docket No 20188, we found that the SLELG method is acceptable if adequate data is available for the proper application of the method and if the carriers' record keeping practices will allow for the monitoring of the reasonableness of the rates. In each of the SLELG prescription orders approved to date, we have concluded that vintage retirement data is a minimum requirement for the proper application and monitoring of SLELG rates. In this proceeding, AT&T commented that it believes SLELG rates should be allowed for all accounts regardless of whether vintage retirement data is maintained; however, it offered no new argument or evidence to support this contention. There is, therefore, no basis on which to rescind the reporting requirements established in Docket No. 20188. We conclude that it is inappropriate to prescribe SLELG rates for accounts in which vintage retirement data is not maintained.

30. The staff proposes that new additions to the COE-Step-by-Step and COE-Crossbar accounts not be depreciated using the SLELG method. The staff argues that it is impractical to determine reasonable future survivor curves for these additions because these accounts consist of classes of equipment which are being rapidly retired from service. The staff proposes that new additions, as well as embedded plant, in these accounts be depreciated using the remaining-life method, and asserts

that the remaining-life method will assure timely and complete recovery of capital. AT&T disagreed and argued that the objectives of the FCC, as stated in our decision in Docket No. 20188, would be frustrated by not applying SLELG rates to these accounts.

31. Both the FCC staff and the Kentucky Commission stated that estimated survivor curves for COE-Step-by-Step and COE-Crossbar have *not* been determined in previous depreciation studies and that it is impractical to do so at this time. This is because it has not been demonstrated that the companies can accurately estimate future additions or retirements for individual switching units. With the majority of remaining lives for electromechanical equipment in the three to seven year range, the error of these estimates will likely be significant. New additions to these accounts will clearly have very short and volatile estimated remaining lives, making the development of reliable survivor curves virtually impossible. Without reliable survivor curves, the development of an SLELG depreciation rate is illusory. This is because the remaining life "corrections" and curve shape changes would rapidly alter the overall depreciation rate for the account. We previously stated that SLELG rates should be used if adequate data exists to properly apply the method. Inasmuch as the future survivor curves cannot be practically determined, we agree with the staff that the proper application of the method cannot be accomplished for these accounts.

32. Additionally, as noted by AT&T, the current Bell System investment in the electromechanical accounts is approximately $13 billion, virtually all of which will be retired over the next ten years. The current annual additions to central office equipment are nearly $7 billion. In this context we find that the $600 million being added annually to the electromechanical accounts, which consists largely of reused (i.e., previously installed) equipment and associated labor, is not significant.

33. AT&T is probably correct that the current remaining-life rates may be only one-half the first year SLELG rates. However, an examination of this by the staff revealed that, if remaining lives were updated annually, the resultant remaining-life rates would be comparable to the first year SLELG rates for COE-Step-by-Step and would average one-third lower for COE-Crossbar. In most cases remaining-life rates are *higher* than SLELG rates by the end of the second year. Considering the aforementioned volatility of the life and curve shape estimates underlying the SLELG method, we find that the additional accruals provided by the SLELG method are insignificant even over the first two years of application.

34. We do not agree with AT&T that the use of the remaining-life method risks any deferral of capital recovery beyond the remaining-lives of the assets. Remaining-life rates are designed to completely depreciate invested capital over the remaining life of a group of assets. This feature

was the primary reason that we changed rules in Docket No. 20188 to allow the use of the remaining-life method. We concur with the staff's reasoning and find that the remaining-life method should be used for depreciation of the COE-Step-by-Step and COE-Crossbar accounts.

35. While we agree with the staff's reasoning on the use of the remaining-life method for the electromechanical accounts, we also believe that some special measure is required to assure full and timely capital recovery on these short remaining life assets. We, therefore, direct the staff to update remaining-life depreciation rates for these accounts on an annual basis as requested by the companies or as is deemed necessary by the staff. These updates will assure that capital recovery is not unnecessarily deferred.

E. *Original Cost and Net Salvage Rates for ELG*

36. We are only prescribing SLELG rates for the original cost of investment for the first four years of new additions to most central office and outside plant accounts. These rates will be applied until the next triennial review of depreciation for these companies. At that time the actual results of the use of the SLELG method will be evaluated, and methods and rates will be modified as necessary.

37. Present carrier accounting practices do not allow carriers to accumulate net salvage data by vintage for all classes of plant. For example, retirement of a complete bay of central office equipment may involve removal of equipment of several vintages, but would normally result in a single aggregate cost of removal and salvage. In this situation it is not feasible to allocate that cost of removal or salvage among the vintages in a meaningful manner. For this reason, instead of prescribing net salvage depreciation rates for each vintages we are prescribing a single net salvage depreciation rate which is to be applied to all new vintages until the next regular review. *See* FCC 82–53, FCC 82–353, and FCC 82–354.

F. *Conclusion*

38. Having considered the responses to the staff's review letters and public notice, the recommendations of the staff, and the proposals of the companies, we find the resulting SLELG rates listed in the Appendix to be appropriate rates to be applied, unless modified by further order of this Commission.

V. Ordering Clause

39. Pursuant to Sections 4(i) and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§4(i) and 220(b), IT IS ORDERED, That the percentages of depreciation set forth in the Appendix to this order are prescribed effective on the dates listed.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

APPENDIX

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
AMERICAN TELEPHONE AND TELEGRAPH COMPANY—
LONG LINES DEPARTMENT

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
241	Pole Lines	1982	15.7	−21	14.3	10.7	9.0	8.0	1.3
242.2	Underground Cable	1982	40	29	4.2	3.8	3.5	3.4	−0.7
242.3	Buried Cable	1982	45	0	3.9	3.4	3.2	3.1	0.
242.4	Submarine Cable	1982	28	−1	4.0	4.0	4.0	4.0	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	20	5	9.1	7.9	7.2	6.8	−0.3
	DDS Circuit	1983	12.8	−4	14.7	11.8	10.3	9.5	0.3
	Radio	1983	18	3	9.1	8.1	7.5	7.1	−0.2
	Electronic	1983	21	1	8.3	7.0	6.3	6.0	−0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF MARYLAND

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	18	−4	9.7	8.5	7.8	7.3	0.2
	DDS Circuit	1983	13.9	−4	12.3	10.7	9.7	9.0	0.3
	Radio	1983	16	8	9.6	8.9	8.3	7.9	−0.5
	Electronic	1983	21	3	8.3	7.0	6.3	6.0	−0.1

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	16.5	−3	11.5	9.6	8.5	7.9	0.2
	DDS Circuit	1983	13.7	−4	10.5	10.1	9.5	9.0	0.3
	Radio	1983	18	−5	8.8	8.3	7.8	7.4	0.3
	Electronic	1983	21	1	8.3	7.0	6.3	6.0	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF WEST VIRGINIA

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	20	−3	8.8	7.7	7.1	6.6	0.2
	DDS Circuit	1983	11.4	−4	14.3	12.4	11.2	10.4	0.4
	Radio	1983	18	−5	8.4	8.1	7.7	7.4	0.3
	Electronic	1983	24	0	7.3	6.2	5.6	5.3	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
ILLINOIS BELL TELEPHONE COMPANY

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	16	−2	13.9	10.5	8.8	8.0	0.1
	DDS Circuit	1983	12.7	−4	15.0	11.8	10.2	9.3	0.3
	Radio	1983	17	4	8.7	8.7	8.7	8.5	−0.2
	Electronic	1983	22	1	7.9	6.7	6.1	5.7	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
INDIANA BELL TELEPHONE COMPANY, INCORPORATED

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	18	−9	9.6	8.8	8.1	7.6	0.5
	DDS Circuit	1983	12	−4	13.3	12.1	11.1	10.3	0.3
	Radio	1983	17	−3	9.0	8.6	8.1	7.7	0.2
	Electronic	1983	21	0	8.3	7.0	6.3	6.0	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
SOUTH CENTRAL BELL TELEPHONE COMPANY—ALABAMA

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	17	2	13.2	10.4	8.9	8.1	−0.1
	DDS Circuit	1983	12.3	−4	14.2	12.9	11.6	10.6	0.3
	Radio	1983	21	−4	7.1	6.7	6.4	6.2	0.2
	Electronic	1983	23	2	7.6	6.4	5.8	5.5	−0.1

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
SOUTH CENTRAL BELL TELEPHONE COMPANY—KENTUCKY

Acct. No.	*Class or Subclass of Plant (a)*	*Year (b)**	*Proj. Life (c)*	*Fut. Net Salv. (d)*	*Original Cost Rates Age at Beginning of Year 0.0 (e)*	*0.5 (f)*	*1.5 (g)*	*2.5 (h)*	*Net Salv. Rate (i = −d/c)*
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	14	0	14.9	11.7	10.0	9.1	0.
	DDS Circuit	1983	12	−4	13.3	11.6	10.5	9.8	0.3
	Radio	1983	20	−9	7.5	7.1	6.7	6.5	0.5
	Electronic	1983	23	3	7.6	6.4	5.8	5.5	−0.1

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
SOUTH CENTRAL BELL TELEPHONE COMPANY—LOUISIANA

Acct. No.	*Class or Subclass of Plant (a)*	*Year (b)**	*Proj. Life (c)*	*Fut. Net Salv. (d)*	*Original Cost Rates Age at Beginning of Year 0.0 (e)*	*0.5 (f)*	*1.5 (g)*	*2.5 (h)*	*Net Salv. Rate (i = −d/c)*
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	15.6	−5	13.3	10.5	9.1	8.3	0.3
	DDS Circuit	1983	11.6	−4	15.1	13.0	11.6	10.6	0.3
	Radio	1983	21	−5	7.3	6.9	6.6	6.3	0.2
	Electronic	1983	21	1	8.3	7.0	6.3	6.0	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
SOUTH CENTRAL BELL TELEPHONE COMPANY—MISSISSIPPI

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1982	18	−4	13.3	10.4	8.9	8.0	0.2
	DDS Circuit	1982	11.4	−4	16.3	13.4	11.7	10.6	0.4
	Radio	1982	20	−7	7.5	7.1	6.7	6.5	0.4
	Electronic	1982	24	3	7.3	6.2	5.6	5.3	−0.1

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
SOUTH CENTRAL BELL TELEPHONE COMPANY—TENNESSEE

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1982	15	4	17.5	12.5	10.2	8.9	−0.3
	DDS Circuit	1982	11.4	−4	17.9	13.3	11.1	10.0	0.4
	Radio	1982	20	−3	7.5	7.1	6.7	6.5	0.2
	Electronic	1982	22	0	7.9	6.7	6.1	5.7	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
SOUTHERN BELL TELEPHONE COMPANY AND TELEGRAPH COMPANY—SOUTH CAROLINA

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	16.5	4	10.7	9.3	8.4	7.9	−0.2
	DDS Circuit	1983	11.4	−4	15.0	12.8	11.5	10.5	0.4
	Radio	1983	18	−6	12.6	9.5	8.0	7.2	0.3
	Electronic	1983	22	2	7.9	6.7	6.1	5.7	−0.1

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
THE SOUTHERN NEW ENGALND TELEPHONE COMPANY

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	18	0	7.1	7.1	7.1	7.0	0.
	DDS Circuit	1983	14	−4	9.4	9.3	9.1	8.8	0.3
	Radio	1983	19	4	9.5	7.8	7.0	6.5	−0.2
	Electronic	1983	22	−1	7.9	6.7	6.1	5.7	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
WISCONSIN TELEPHONE COMPANY

Acct. No.	*Class or Subclass of Plant (a)*	*Year (b)**	*Proj. Life (c)*	*Fut. Net Salv. (d)*	*Original Cost Rates Age at Beginning of Year 0.0 (e)*	*0.5 (f)*	*1.5 (g)*	*2.5 (h)*	*Net Salv. Rate (i = −d/c)*
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Non-Ded. Circuit	1983	17.5	−3	8.6	8.4	8.1	7.7	0.2
	DDS Circuit	1983	13.7	−4	11.0	10.7	10.0	9.4	0.3
	Radio	1983	13.7	6	13.5	10.8	9.5	8.8	−0.4
	Electronic	1983	22	4	7.9	6.7	6.1	5.7	−0.2

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FCC 82–577

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON D.C. 20554

In the Matter of
The Prescription of Revised Percentages of Depreciation pursuant to Section 220(b) of the Communications Act of 1934, as amended for: General Telephone Company of Florida General Telephone Company of Indiana, Inc. General Telephone Company of Michigan General Telephone Company of Ohio General Telephone Company of the Southeast General Telephone Company of the Southwest

ORDER

Adopted: December 22, 1982; Released: December 30, 1982

BY THE COMMISSION:

I. Introduction

1. Section 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(b), states that the Commission shall, as soon as practicable, prescribe classes of property for which depreciation charges may be included in operating expenses and the percentages of depreciation which shall be charged to each of the classes. It also states that the Commission may, when it deems necessary, modify the classes and percentages so prescribed.

2. By this order we prescribe revised percentages of depreciation (depreciation rates) for the six GTE companies listed above using the straight line equal life group (SLELG) method.

II. Background

A. *Straight Line Equal Life Group Method*

3. In FCC Docket No. 20188, 83 FCC 2d 267 (1980), *reconsideration*, 87 FCC 2d 916 (1981), we amended our rules to permit the use of the SLELG depreciation method for new additions to plant as an alternative to the straight line vintage group (SLVG) method, provided that adequate data is available for the proper application of the method.

4. The primary differences between the SLELG and SLVG methods lie in the definition of the basic depreciation groups and in the approach each takes in spreading the original cost of assets comprising the basic groups over their estimated average service lives. While SLVG forms its basic groups by combining all units placed in one year (i.e., a vintage group), SLELG creates its basic groups by combining all units within each vintage group which share an equal life expectancy (i.e., an equal life group). While the SLVG method is designed to depreciate 100% of the original cost of a vintage on average over the life cycle of each vintage, the SLELG method is designed to depreciate 100% of the original cost of each plant unit over its life. As a consequence, if projections are accurate, the SLELG method should allow for depreciation at a rate more representative of the actual consumption of units of property than SLVG. We concluded in Docket No. 20188 that the proper application and monitoring of this method would not only enhance the carriers' cash flow and present to all interested parties a more accurate and objective financial picture of the carriers' operations and capital requirements, but would also benefit their customers by encouraging innovation and the introduction of new technology.

5. Under both the SLVG and SLELG methods, retirement projections, service life estimates, and depreciation rates are normally determined, in part, through the use of survivor curves. These survivor curves define the relationship between the age of plant investment and the relative percentage expected to remain in service. Under the SLELG methodology, the survivor curves assume an added significance—that of defining the basic (equal life) groups. Under the SLVG method, most survivor curves have been selected only after the staff has completed detailed statistical analysis of historical retirement data. With the added significance of the survivor curves in the SLELG method, the availability and analysis of historical retirement data becomes even more important.

6. We recognized the importance of adequate data in Docket No. 20188 where we found that the SLELG method is acceptable, provided that:

> ". . . it is assured that adequate data is available for proper application of the method; that record keeping and reporting practices will enable monitoring of the reasonableness of the rate of allocation of both original cost and provisions for salvage and removal; that such allocation of original cost will achieve allocation over the service life of the property neither more nor less than 100% of the investment net of salvage value."

Accordingly, we directed the staff to take such measures as may be necessary to insure the measurability and accountability of the results under the SLELG method.

7. We further directed the staff to phase in the implementation of SLELG depreciation rates beginning with the outside plant accounts, followed by the central office equipment accounts and concluding with all other plant accounts. in accordance with this directive, during the past two years the staff reviewed SLELG rates for the outside plant accounts for the FCC-subject GTE companies. As a result of that review, we adopted SLELG rates for new additions to most of the outside plant accounts for four of these companies in January (*see* FCC 82–53, 88 FCC 2d 1567 (1982)), for two additional companies in July (*see* FCC 82–354, 90 FCC 2d 997 (1982)) and for three additional companies in December (see FCC 82–543, Mimeo No. 32469). With the adoption of the December order, the prescription of SLELG rates for the outside plant accounts is complete for the FCC-subject GTE companies.

8. This year the staff also reviewed SLELG rates for the central office equipment accounts for most of the GTE companies. As a result of that review, we adopted SLELG rates for new additions to most of the central office equipment accounts for three of these companies in December (*see* FCC 82–543, Mimeo No. 32469). Our findings and conclusions regarding the SLELG rates for the six GTE companies listed in the caption of this proceeding are discussed below (see paragraph 28 ff). With the adoption of this order, the prescription of SLELG rates for the central office equipment accounts is essentially complete for the GTE companies.

B. *Review Procedures*

9. Since the late 1940's, the Commission has reviewed and prescribed the depreciation rates of approximately one-third of the larger FCC-subject telephone companies each year. In most cases we have prescribed rates for a carrier only after the following actions have been completed:

(1) Submittal of depreciation studies by the carrier.
(2) Staff review of the carrier's filings and studies in support of its proposed life and salvage factors.
(3) Independent staff analysis of such information as the carrier's plant mortality data and equipment retirement plans.
(4) Preparation of preliminary staff recommendations.
(5) Discussion of the carrier's filings and the preliminary Commission staff proposals at a conference in which representatives of the carrier and the staffs of the respective state commissions and the FCC participate (i.e., a three-way meeting).

10. During the past year, in addition to the filings in conjunction with the staff's normal triennial representation cycle, we received SLELG proposals from the GTE companies listed in the caption of this proceed-

ing. The need to resolve the issues raised by these filings in a timely manner required the staff to depart from its traditional procedures. Because it was apparent that there were insufficient staff resources to allow the complete review of life and salvage factors for the carriers requesting SLELG rates, the staff chose to omit portions of steps 2 and 3 above and instead use the life and salvage factors which underlie currently prescribed rates. In addition, time and resource constraints precluded the discussion of SLELG rates with the carriers and respective state commissions at three-way meetings. Instead, comments regarding the carrier filings and preliminary staff proposals were solicited from the carriers and respective state commissions via correspondence and telephone conversations.

11. In 1981 the six companies listed on page 1 filed for SLELG rates for the central office equipment accounts to be effective on January 1, 1982 or January 1, 1983. The staff thoroughly reviewed the carriers' filings and found that, in most instances, the carriers had used the life and salvage factors underlying the currently prescribed rates.

12. On August 20, 1982, the staff sent review letters to the GTE companies and respective state commissions outlining its assessment of the companies' SLELG filings and its recommendations for SLELG rates. Comments were solicited from the companies and the respective state commissions regarding the company and staff recommendations. In response to these review letters, the GTE companies refiled for SLELG rates for the central office equipment accounts. Five of the six filings were consistent with the FCC staff recommendations. The other filing (i.e., GTE-Florida) indicated that there were few areas of disagreement with the FCC staff. the areas of disagreement are identified later in this order (see paragraph 15). On October 12, 1982, the staff issued a public notice (Report No. 2969), entitled, "Depreciation Rate Prescription Proposed for Domestic Telephone Companies." This public notice summarized the FCC staff's proposals for revised depreciation rates and the change in depreciation expense that would result if those proposed depreciation rates are approved. On October 13, 1982, the staff transmitted to each company and respective state commission a copy of the October 12 public notice and schedules containing the proposed SLELG rates.

III. Summary of Comments

A. *August 20, 1982 Review Letters*

13. Responses to the staff's August 20, 1982 review letters were received from the GTE-Midwestern Operations (MTO), GTE-Florida, and the following state commissions: Michigan, Oklahoma, South Carolina, Texas and Virginia.

14. MTO, GTE-Florida and the Oklahoma and Texas commissions were in substantial agreement with the FCC staff position that SLELG rate should be used. The Virginia Commission opposed the use of SLELG rates. The Michigan and South Carolina commissions did not state whether they supported or opposed the use of SLELG.

15. MTO (on behalf of GTE-Indiana, GTE-Michigan and GTE-Ohio) and the staff of the Oklahoma Commission concurred with the FCC staff proposals as outlined in the August 20, 1982, review letters. GTE-Florida agreed with most of the FCC staff's proposals; however, it disagreed with the proposal *not* to prescribe SLELG rates for electromechanical switching equipment, particularly the COE-Manual account which contains investments in modern traffic service position systems (TSPS).[1] GTE-Florida further stated that the difference of opinion for the COE-Manual account could be minimized by its maintaining the TSPS investment in a separate category and using the SLELG method for that category and using the remaining-life method for investments in older manual switching equipment. In addition, GTE-Florida requested that, in our final order, we indicate the survivor curves used in determining the SLELG rates for central office equipment. It stated that this would help avoid confusion since the curve shapes proposed by GTE-Florida may be different for some accounts than those proposed by the FCC staff even though the results are essentially the same.

16. The staff of the Texas Commission agreed with our staff's position as to the application of the SLELG method where appropriate records exist. It expressed the concern that the life estimate underlying the FCC staff's electronic switching equipment proposal is too short for digital switching offices. Texas further stated that, inasmuch as these life estimates will be restudied and revised as necessary during 1983 in conjunction with the regularly scheduled review of GTE-Southwest's rates, it is not necessary that its concern be dealt with in this proceeding.

17. The Virginia Commission reiterated its comments made in response to an earlier public notice; i.e., that SLELG is neither necessary nor in the best interersts of Virginia telephone companies or customers.

18. The staff of the Michigan Commission stated that the use of SLELG rates for outside plant was under consideration at a hearing before the Michigan Commission. It believes that the Michigan Commission decision, when it is reached, may have a bearing on the use of SLELG rates for central office equipment.

19. The South Carolina Commission stated that it was concerned about several assumptions made by the staff as well as the underlying meth-

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[1] A TSPS is a computer controlled switching system which provides centralized automatic message accounting for customer-dialed toll calls such as person-to-person, collect, and credit card calls. Such a system allows for a more efficient handling of these special toll calls than the manual toll switchboards previously used.

odologies the staff used. It stated that a three-way meeting is the appropriate forum for a complete enunciation of all its concerns and alternative proposals; and it, therefore, requested the FCC to postpone consideration of the implementation of SLELG for central office equipment in South Carolina until after the scheduled three-way meeting in 1983.

B. *October 12, 1982 Public Notice*

20. Comments in response to the October 12, 1982 public notice were received from MTO and the state regulatory commissions of Arkansas, Florida, Michigan and Virginia.

21. MTO stated that it had reviewed the staff's proposed SLELG rates for central office equipment for GTE-Indiana, GTE-Michigan and GTE-Ohio and found them to be in agreement with the formal filing of September 17, 1982.

22. The staffs of the Arkansas and Michigan commissions stated that GTE-Southwest (Arkansas) and GTE-Michigan are authorized to use only the currently prescribed rates until formal applications for SLELG rates for central office equipment are filed with their commissions. The Michigan staff reiterated its earlier comments that the use of SLELG rates for the outside plant accounts is currently under consideration by its Commission and the outcome of that hearing may have a bearing on this matter. The staff of the Arkansas Commission expressed its objection to the FCC's interpretation of the comments it submitted in a prior proceeding concerning the use of SLELG. It stated that its refusal to accept the FCC's SLELG implementation plan in no way implied rejection of the SLELG concept.

23. The Florida Commission stated that the remaining-life rates that it approved in 1981 are still appropriate for GTE-Florida, and that it did not plan to recommend revised rates during this proceeding.

24. The staff of the Virginia Commission reiterated its earlier comments opposing the use of the SLELG method. It expressed the concern that its comments with regard to the GTE companies' SLELG filings for outside plant were dismissed without sufficient consideration in FCC Order 82–354, 90 FCC 2d 997 (1982). The Virginia Commission also questioned why our staff requested comments when we have already stated that the question of whether or not the SLELG method should be used was decided in Docket No. 20188.

IV. Discussion of Issues

A. *Use of SLELG*

25. In our decision in Docket No. 20188, we considered the arguments expressed by the parties for and against the use of the SLELG method and determined that the use of SLELG rates is appropriate, provided

adequate data is available. In the discussion in the Final Report and Order, we found that the use of SLELG comports with the mandate of Section 1 of the Communications Act, "to make available . . . a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . ." 47 U.S.C. § 151. We reaffirmed our decision allowing the use of SLELG in our Order on Reconsideration as well as in five prescription orders approved this year (viz., FCC 82–53 88 FCC 2d 1567 (1982), FCC 82–353 *supra*, FCC 82–354, 90 FCC 2d 997 (1982), FCC 82–542, Mimeo No. 32468 and FCC 82–543, Mimeo No. 32469). Nevertheless, several states have again questioned whether the use of SLELG rates is warranted. Inasmuch as these states have not raised any new arguments or evidence regarding the use of SLELG rates, we have no basis to reverse our decision on this matter. Our rules, as amended in Docket No. 20188, clearly allow the use of SLELG for accounts in which adequate data is available to properly apply and monitor it. Therefore, we will allow its use.

26. Although the Virginia Commission is correct that the issue of whether or not the SLELG method may be used has already been decided, this does not mean that it was meaningless to solicit comments. The primary purpose of the October 12, 1982, public notice was not to bring into question our rules, which clearly allow the use of the SLELG method, but rather to solicit comments regarding the effective dates proposed by the carriers and the life and net salvage factors that were under consideration for use in determining SLELG rates. Virginia did not respond to these issues. However, several respondants did and their comments are considered in this order (see paragraph 28 ff).

B. *Preemption of States*

27. Several state commissions stated that they have not approved SLELG procedures for their jurisdictions. The presence or absence of state commission approval of SLELG rates does not control the prescription of SLELG rates in this order. The prescription of depreciation rates is plainly a matter within the Commission's jurisdiction under Section 220(b) of the Communications Act. We have today ruled that such depreciation orders are binding at both the federal and state levels. *See* Amendment of Part 31, FCC 82–__, Mimeo No. _____ (adopted December 22, 1982).

C. *Life and Net Salvage Factors*

28. Our staff has stated that SLELG rates should be based upon the life and salvage factors determined in conjunction with the staff's last complete review of these companies' rates, because these companies are not scheduled for a complete review of depreciation rates until 1983 or 1984, and staff resources did not permit a complete review of life and salvage

factors this year. In the October 12, 1982 public notice, the staff clearly stated its preference for the use of current life and salvage factors, and there were no comments to the contrary in response to that public notice. Furthermore, the GTE companies agreed with the staff and filed for SLELG rates based upon the factors determined in the last complete depreciation rate review. In this instance, we find that the benefits derived from implementing the new methods in a timely manner outweigh any advantages that may be derived from improving the precision of the estimates through the preparation and review of new studies of life and salvage. Furthermore, any inaccuracies that may result will be identified and resolved in the regularly scheduled reviews in 1983 and 1984.

29. The South Carolina Commission contended that SLELG rates should not be prescribed until it has had an opportunity to discuss the rates at a three-way meeting. We agree with South Carolina that it would be preferable to prescribe rates only after all the steps outlined in paragraph 9 have been completed; however, we believe that the completion of all the steps outlined in that paragraph would have resulted in an unacceptable delay in the implementation of SLELG rates. We, therefore, believe that the staff's departure from the traditional review procedures (i.e., especially the decision not to hold three-way conferences) was justified. Furthermore, we find that, with the staff review letters having been sent to the carriers and respective state commissions in August and with the public notice having been issued in October, South Carolina and all other parties had a reasonable opportunity to review the company and FCC staff proposals and submit their views for our consideration.

30. GTE-Florida suggested that, in our orders, we indicate the survivor curves underlying the rates that we prescribe. Inasmuch as there are a multiplicity of factors considered and used in developing the rates which are prescribed, we do not believe that it would be practical to list them all in the orders. We believe, however, that the carriers should be informed of such factors, and we direct the staff to work with the carriers in order to insure that they are so informed.

D. *Accounts for which SLELG Rates are not Recommended*

31. The staff proposes that new additions to the electromechanical switching equipment accounts not be depreciated using the SLELG method. The staff argues that it is impractical to determine reasonable future survivor curves for these additions because these accounts consist of classes of equipment which are being rapidly retired from service. The staff proposes that new additions, as well as embedded plant, in these accounts be depreciated using the remaining-life method, and asserts that the remaining-life method will assure timely and complete recovery

of capital. The MTO agreed with the staff's proposal; however, GTE-Florida disagreed and stated that the Commission has authorized the use of SLELG rates for all central office equipment accounts.

32. The staff notes that estimated survivor curves for electromechanical switching equipment have *not* been determined in previous depreciation studies and that it is impractical to do so at this time. This is because it has not been demonstrated that the companies can accurately estimate future additions or retirements for individual switching units. With the remaining lives for electromechanical equipment in the three to eight year range, the error of these estimates will likely be significant. New additions to these accounts will clearly have very short and volatile estimated remaining lives, making the development of reliable survivor curves virtually impossible. Without reliable survivor curves, the development of an SLELG depreciation rate is illusory. This is because the remaining life "corrections" and curve shape changes would rapidly alter the overall depreciation rate for the account. We previously stated that SLELG rates should be used if adequate data exists to properly apply the method. Inasmuch as the future survivor curves cannot be practically determined, we do not believe that the proper application of the method can be accomplished for these accounts.

33. While we agree with the staff's reasoning on the use of the remaining-life method for the electromechanical accounts, we also believe that some special measure is required to assure full and timely capital recovery on these short remaining life assets. We, therefore, direct the staff to update remaining-life depreciation rates for these accounts on an annual basis as requested by the companies or as is deemed necessary by the staff. These updates will assure that capital recovery is not unnecessarily deferred.

34. We believe that GTE-Florida's suggestion that it segregate the investment in the COE-Manual account between the TSPS and older equipment, and that SLELG rates be developed for the TSPS equipment, has merit. Therefore, to the extent that the carriers can segregate and maintain such categories of plant for this account in the future, we direct the staff to consider the development of SLELG rates for the TSPS equipment.

E. *Original Cost and Net Salvage Rates for ELG*

35. We are only prescribing SLELG rates for the original cost of investment for the first four years of new additions to most central office and outside plant accounts. These rates will be applied until the next triennial review of depreciation for these companies. At that time the actual results of the use of the SLELG method will be evaluated, and methods and rates will be modified as necessary.

36. Present carrier accounting practices do not allow carriers to accumulate net salvage data by vintage for all classes of plant. For example, retirement of a complete bay of central office equipment may involve removal of equipment of several vintages, but would normally result in a single aggregate cost of removal and salvage. In this situation it is not feasible to allocate that cost of removal or salvage among the vintages in a meaningful manner. For this reason, instead of prescribing net salvage depreciation rates for each vintage, we are prescribing a single net salvage depreciation rate which is to be applied to all new vintages until the next regular review. *See* FCC 82–53, FCC 82–353, and FCC 82–354.

F. *Conclusion*

37. Having considered the responses to the staff's review letters and public notice, the recommendations of the staff, and the proposals of the companies, we find the resulting SLELG rates listed in the Appendix to be appropriate rates to be applied, unless modified by further order of this Commission.

V. Ordering Clause

38. Pursuant to Sections 4(i) and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ (i) and 220(b), IT IS ORDERED, That the percentages of depreciation set forth in the Appendix to this order are prescribed effective on the dates listed.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

APPENDIX

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF FLORIDA

Acct. No.	*Class or Subclass of Plant (a)*	*Year (b)**	*Proj. Life (c)*	*Fut. Net Salv. (d)*	*Original Cost Rates — Age at Beginning of Year 0.0 (e)*	*0.5 (f)*	*1.5 (g)*	*2.5 (h)*	*Net Salv. Rate (i = −d/c)*
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Automatic Sw (Electronic)	1983	12.8	−6	10.2	9.5	9.0	8.7	0.5
	Automatic Sw (Digital)	1983	27	−5	5.0	4.7	4.5	4.4	0.2
	Circuit	1983	15	10	14.1	11.8	10.2	9.1	−0.7
	Radio	1983	17	2	6.9	6.7	6.6	6.5	−0.1

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF INDIANA, INCORPORATED

Acct. No.	*Class or Subclass of Plant (a)*	*Year (b)**	*Proj. Life (c)*	*Fut. Net Salv. (d)*	*Original Cost Rates Age at Beginning of Year 0.0 (e)*	*0.5 (f)*	*1.5 (g)*	*2.5 (h)*	*Net Salv. Rate (i=−d/c)*
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Analog Equipment	1983	22	8	6.8	6.1	5.7	5.5	−0.4
	Digital Equipment	1983	22	8	6.8	6.1	5.7	5.5	−0.4
	Circuit	1983	16	15	9.9	9.2	8.7	8.2	−0.9
	Radio	1983	13	5	14.4	11.4	9.9	9.1	−0.4

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF MICHIGAN

Acct. No.	*Class or Subclass of Plant (a)*	*Year (b)**	*Proj. Life (c)*	*Fut. Net Salv. (d)*	*Original Cost Rates Age at Beginning of Year 0.0 (e)*	*0.5 (f)*	*1.5 (g)*	*2.5 (h)*	*Net Salv. Rate (i=−d/c)*
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Analog Equipment	1983	20	0	7.4	6.6	6.2	6.0	0.
	Circuit	1983	26	4	9.9	9.2	8.7	8.2	−0.3
	Radio	1983	15	−3	10.5	9.8	9.2	8.7	−0.2
	Digital Switching	1983	23	0	6.5	5.8	5.5	5.3	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF OHIO

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Analog Equipment	1983	18.1	1	8.1	7.3	6.8	6.6	−0.1
	Digital Switching	1983	25	1	6.0	5.4	5.1	4.9	0.
	Circuit	1983	15.5	11	10.2	9.5	8.9	8.5	−0.7
	Radio	1983	15	2	8.5	8.4	8.2	8.0	−0.1

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF THE SOUTHEAST—GEORGIA

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Digital Switching	1983	25	5	6.0	5.4	5.1	4.9	−0.2
	Circuit	1983	18	20	11.9	10.1	8.8	8.0	−1.1
	Radio	1983	15	0	8.5	8.4	8.2	8.0	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF THE SOUTHEAST—SOUTH CAROLINA

Acct. No.	*Class or Subclass of Plant (a)*	*Year (b)**	*Proj. Life (c)*	*Fut. Net Salv. (d)*	*Original Cost Rates Age at Beginning of Year 0.0 (e)*	*0.5 (f)*	*1.5 (g)*	*2.5 (h)*	*Net Salv. Rate (i = −d/c)*
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Digital Switching	1983	25	5	6.0	5.4	5.1	4.9	−0.2
	Circuit	1983	18	20	11.9	10.1	8.8	8.0	−1.1
	Radio	1983	19	−5	6.7	6.7	6.6	6.4	0.3

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF THE SOUTHEAST—VIRGINIA

Acct. No.	*Class or Subclass of Plant (a)*	*Year (b)**	*Proj. Life (c)*	*Fut. Net Salv. (d)*	*Original Cost Rates Age at Beginning of Year 0.0 (e)*	*0.5 (f)*	*1.5 (g)*	*2.5 (h)*	*Net Salv. Rate (i = −d/c)*
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Digital Switching	1983	25	5	6.0	5.4	5.1	4.9	−0.2
	Circuit	1983	16	20	13.3	11.2	9.7	8.7	−1.3
	Radio	1983	14	0	9.1	9.0	8.8	8.5	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF THE SOUTHEAST—WEST VIRGINIA

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Digital Switching	1983	26	0	5.9	5.3	5.0	4.8	0.
	Circuit	1983	18	20	11.9	10.1	8.8	8.0	−1.1
	Radio	1983	15	0	8.5	8.4	8.2	8.0	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF THE SOUTHWEST—ARKANSAS

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Electronic Switching	1983	27	4	5.6	5.0	4.7	4.6	−0.1
	Circuit	1983	16.5	7	11.3	9.9	8.9	8.3	−0.4
	Radio	1983	14	0	9.3	8.7	8.3	8.0	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF THE SOUTHWEST—NEW MEXICO

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Electronic Switching	1983	33	3	4.6	4.2	4.0	3.8	−0.1
	Circuit	1983	16.5	7	11.3	9.9	8.9	8.3	−0.4
	Radio	1983	14	0	9.3	8.7	8.3	8.0	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF THE SOUTHWEST—OKLAHOMA

Acct. No.	Class or Subclass of Plant (a)	Year (b)*	Proj. Life (c)	Fut. Net Salv. (d)	Original Cost Rates Age at Beginning of Year 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	Net Salv. Rate (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Electronic Switching	1983	29	3	5.2	4.7	4.4	4.3	−0.1
	Circuit	1983	16.5	7	11.3	9.9	8.9	8.3	−0.4
	Radio	1983	14	0	9.3	8.7	8.3	8.0	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
GENERAL TELEPHONE COMPANY OF THE SOUTHWEST—TEXAS

Acct. No.	*Class or Subclass of Plant* (a)	*Year* (b)*	*Proj. Life* (c)	*Fut. Net Salv.* (d)	*Original Cost Rates Age at Beginning of Year* 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	*Net Salv. Rate* (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Electronic Switching	1983	22	4	6.8	6.1	5.7	5.5	−0.2
	Circuit	1983	16.5	7	11.3	9.9	8.9	8.3	−0.4
	Radio	1983	14	0	9.3	8.7	8.3	8.0	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

FCC 82–578

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
The Prescription of Revised Percentages of Depreciation pursuant to Section 220(b) of the Communications Act of 1934, as amended for: Continental Telephone Company of Virginia

ORDER

Adopted: December 22, 1982; Released: December 30, 1982

BY THE COMMISSION:

I. Introduction

1. Section 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(b), states that the Commission shall, as soon as practicable, prescribe classes of property for which depreciation charges may be included in operating expenses and the percentages of depreciation which shall be charged to each of the classes. It also states that the Commission may, when it deems necessary, modify the classes and percentages so prescribed.

2. By this order we prescribe revised percentages of depreciation (depreciation rates) for Continental of Virginia using the straight line equal life group (SLELG) method.

II. Background

A. *Straight Line Equal Life Group Method*

3. In FCC Docket No. 20188, 83 FCC 2d 267 (1980), *reconsideration*, 87 FCC 2d 916 (1981), we amended our rules to permit the use of the SLELG depreciation method for new additions to plant as an alternative to the straight line vintage group (SLVG) method, provided that adequate data is available for the proper application of the method.

4. The primary differences between the SLELG and SLVG methods lie in the definition of the basic depreciation groups and in the approach each takes in spreading the original cost of assets comprising the basic groups over their estimated average service lives. While SLVG forms its basic groups by combining all units placed in one year (i.e., a vintage group), SLELG creates its basic groups by combining all units within each vintage group which share an equal life expectancy (i.e., an equal life group). While the SLVG method is designed to depreciate 100% of the original cost of a vintage on average over the life cycle of each vintage, the SLELG method is designed to depreciate 100% of the original cost of each plant unit over its life. As a consequence, if projections are accurate, the SLELG method should allow for depreciation at a rate more representative of the actual consumption of units of property than SLVG. We concluded in Docket No. 20188 that the proper application and monitoring of this method would not only enhance the carriers' cash flow and present to all interested parties a more accurate and objective financial picture of the carriers' operations and capital requirements, but would also benefit their customers by encouraging innovation and the introduction of new technology.

5. Under both the SLVG and SLELG methods, retirement projections, service life estimates, and depreciation rates are normally determined, in part, through the use of survivor curves. These survivor curves define the relationship between the age of plant investment and the relative percentage expected to remain in service. Under the SLELG methodology, the survivor curves assume an added significance—that of defining the basic (equal life) groups. Under the SLVG method, most survivor curves have been selected only after the staff has completed detailed statistical analysis of historical retirement data. With the added significance of the survivor curves in the SLELG method, the availability and analysis of historical retirement data becomes even more important.

6. We recognized the importance of adequate data in Docket No. 20188 where we found that the SLELG method is acceptable, provided that:

> ". . . it is assured that adequate data is available for proper application of the method; that record keeping and reporting practices will enable monitoring of the reasonableness of the rate of allocation of both original cost and provisions for salvage and removal; that such allocation of original cost will achieve allocation over the service life of the property neither more nor less than 100% of the investment net of salvage value."

Accordingly, we directed the staff to take such measures as may be necessary to insure the measurability and accountability of the results under the SLELG method.

7. We further directed the staff to phase in the implementation of SLELG depreciation rates beginning with the outside plant accounts,

followed by the central office equipment accounts and concluding with all other plant accounts. In accordance with this directive, this year the staff received SLELG rates for the outside plant and the central office equipment accounts for Continental of Virginia. Our findings and conclusions regarding the SLELG rates for Continental of Virginia are discussed below (see paragraph 17 ff). With the adoption of this order, we are beginning the implementation of SLELG rates for the Continental Telephone Corporation operating telephone companies.

B. *Review procedures*

8. Since the late 1940's, the Commission has reviewed and prescribed the depreciation rates of approximately one-third of the larger FCC-subject telephone companies each year. In most cases we have prescribed rates for a carrier only after the following actions have been completed:

(1) Submittal of depreciation studies by the carrier.
(2) Staff review of the carrier's findings and studies in support of its proposed life and salvage factors.
(3) Independent staff analysis of such information as the carrier's plant mortality data and equipment retirement plans.
(4) Preparation of preliminary staff recommendations.
(5) Discussion of the carrier's findings and the preliminary Commission staff proposals at a conference in which representatives of the carrier and the staffs of the respective state commissions and the FCC participate (i.e., a three-way meeting).

9. During the past year, in addition to the filings in conjunction with the staff's normal triennial represcription cycle, we received SLELG proposals from Continental of Virginia. The need to resolve the issues raised by this filing in a timely manner required the staff to depart from its traditional procedures. Because it was apparent that there were insufficient staff resources to allow the complete review of life and salvage factors for Continental of Virginia, the staff chose to omit portions of steps 2 and 3 above and instead use the life and salvage factors which underlie currently prescribed rates. In addition, time and resource constraints precluded the discussion of SLELG rates with the carrier and the Virginia State Corporation Commission at a three-way meeting. Instead, comments regarding the carrier filing and preliminary staff proposals were solicited from the carrier and state commission via correspondence.

10. Continental of Virginia submitted a proposal on July 1, 1982, requesting that SLELG depreciation rates be prescribed for future additions to the outside plant and central office equipment accounts effective January 1, 1982. The staff analyzed the carrier's proposal and arrived at its recommendations and, on October 12, 1982, issued a public notice (Report No. 2969) entitled, "Depreciation Rate Prescriptions Proposed

For Domestic Telephone Companies." This public notice summarized the FCC staff's proposals for revised depreciation rates and the change in depreciation expense that would result if those proposed depreciation rates were approved. On October 14, 1982, the staff transmitted to the company and the Virginia Commission a copy of the October 12 public notice as well as schedules containing the proposed SLELG rates.

III. Summary of Comments

11. Responses to the staff's October 12, 1982 public notice were received from Continental of Virginia and the Virginia State Corporation Commission.

12. Continental of Virginia agreed with the FCC staff that the survivor curves and future net salvage factors which underlie the currently prescribed depreciation rates are the appropriate factors to use in the calculation of SLELG rates. Continental also agreed with the staff's proposal to use separate SLELG rates for original cost and net salvage. Continental agreed with the staff that survivor curves had not been developed during the review process for several of the switching accounts; however, it disagreed with the staff's assertion that survivor curves cannot be determined for these accounts. Continental contended that the final retirement pattern for these accounts can be derived from the information included in its studies. Nevertheless, Continental agreed with the staff's proposal to use the remaining-life method for these accounts, and to prepare technical updates annually.

13. Continental disagreed with the staff's proposed survivor curve for the COE-Digital account. Continental stated that the curve proposed by the staff is inappropriate because it ignores an expected truncation of life. Continental proposed, as a compromise between its original proposal and the staff's proposal, a different survivor curve which includes a truncation of life.

14. Continental noted that there was relatively minor variances between the company and the FCC staff proposals in several accounts. It believed that the differences were due to differences in the rounding techniques used in the FCC staff's and Continental's computer programs. Continental stated that it is willing to explore the possibility of bringing its programs in line with those used by the FCC staff in order to eliminate future conflicts.

15. The staff of the Virginia Commission reiterated its comments made in response to an earlier public notice; i.e., that SLELG is neither necessary nor in the best interests of Virginia telephone companies or customers. It expressed the concern that its comments with regard to an earlier SLELG filing for outside plant were dismissed without sufficient consideration in FCC Order 82–353, 90 FCC 2d 964 (1982). The Virginia Commission also questioned why our staff requested comments when we

have already stated that the question of whether or not the SLELG method should be used was decided in Docket No. 20188.

IV. Discussion of Issues

A. *The Use of SLELG*

16. In our decision in Docket No. 20188, we considered the arguments expressed by the parties for and against the use of the SLELG method and determined that the use of SLELG rates is appropriate, provided adequate data is available. In the discussion in the Final Report and Order, we found that the use of SLELG comports with the mandate of Section 1 of the Communications Act, "to make available . . . a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . ." 47 U.S.C. § 151. We reaffirmed our decision allowing the use of SLELG in our Order on Reconsideration as well as in five prescription orders approved this year (viz., FCC 82–53, 88 FCC 2d 1567 (1982), FCC 82–353, *supra*, FCC 82–354, 90 FCC 2d 997 (1982), FCC 82–542, Mimeo No. 32468, and FCC 82–543, Mimeo No. 32469). Nevertheless, the Virginia Commission has again questioned whether the use of SLELG rates is warranted. Inasmuch as Virginia has not raised any new arguments or evidence regarding the use of SLELG rates, we have no basis to reverse our decision on this matter. Our rules, as amended in Docket No. 20188, clearly allow the use of SLELG for accounts in which adequate data is available to properly apply and monitor it. Therefore, we will allow its use.

B. *Life and Net Salvage Factors*

17. Our staff has stated that SLELG rates should be based upon the life and salvage factors determined in conjunction with the staff's last complete review of this company's rates, because this company is not scheduled for a complete review of depreciation rates until 1984, and staff resources did not permit a complete review of life and salvage factors this year. In the October 12, 1982 public notice, the staff clearly stated its preference for the use of current life and salvage factors, and with the exception of the COE-Digital account which is discussed below, no comments were received in opposition to the staff's life and salvage proposals. Furthermore, the company agreed with the staff and filed for SLELG rates based upon the factors determined in the last complete depreciation rate review. In this instance, we find that the benefits derived from implementing the new methods in a timely manner outweigh any advantages that may be derived from improving the precision of the estimates through the preparation and review of new studies of life and salvage. Furthermore, any inaccuracies that may result will be identified and resolved in the regularly scheduled review in 1984.

18. For the COE-Digital account, Continental of Virginia proposed a different survivor curve than that proposed by the staff. This account contains only the most modern equipment, as a result, very little data is available to support or reject either proposal. The difference in rate resulting from the use of these curves is slight (i.e., one-tenth of one percent per year). The only clear advantage one has over the other, is that the staff proposal is consistent with that used for many other companies for electronic switching equipment. We believe the staff proposal should prevail here; however, in future studies the curve selection for this account should be scrutinized further.

19. Although the Virginia Commission is correct that the issue of whether or not the SLELG method may be used has already been decided, this does not mean that it was meaningless to solicit comments. The primary purpose of the October 12, 1982, public notice was not to bring into question our rules, which clearly allow the use of the SLELG method, but rather to solicit comments regarding the effective dates proposed by the carriers and the life and net salvage factors that were under consideration for use in determining SLELG rates.

20. Continental proposed rates that were slightly different from those proposed by our staff, and attributed the differences to differences in the computer programs used by Continental and our staff. Inasmuch as the rates proposed by our staff were determined using the same programs as those used to determine the rates which were recently prescribed for the Bell and GTE operating telephone companies, and inasmuch as these programs yielded results essentially identical to those determined independently by Bell and GTE, we believe the rates proposed by the staff should be used in this case. In order to resolve such differences in the future, we direct the staff to work with Continental and explain its calculation of SLELG rates.

C. *Accounts for which SLELG Rates are not Recommended*

21. The staff proposes that new additions to the non-digital switching accounts not be depreciated using the SLELG method. The staff argues that it is impractical to determine reasonable future survivor curves for these additions because these accounts consist of classes of equipment which are being rapidly retired from service. The staff proposes that new additions, as well as embedded plant, in these accounts be depreciated using the remaining-life method, and asserts that the remaining-life method will assure timely and complete recovery of capital. Continental of Virginia accepted the staff's proposal of applying established remaining-life rates to new additions to these accounts.

22. While we agree with the staff's reasoning on the use of the remaining-life method for the non-digital switching accounts, we also believe that some special measure is required to assure full and timely capital

recovery on these short remaining life assets. We, therefore, direct the staff to update remaining-life depreciation rates for these accounts on an annual basis as requested by the companies or as is deemed necessary by the staff. These updates will assure that capital recovery is not unnecessarily deferred.

D. *Original Cost and Net Salvage Rates for ELG*

23. We are only prescribing SLELG rates for the original cost of investment for the first four years of new additions to most central office and outside plant accounts. These rates will be applied until the next triennial review of depreciation for these companies. At that time the actual results of the use of the SLELG method will be evaluated, and methods and rates will be modified as necessary.

24. Present carrier accounting practices do not allow carriers to accumulate net salvage data by vintage for all classes of plant. For example, retirement of a complete bay of central office equipment may involve removal of equipment of several vintages, but would normally result in a single aggregate cost of removal and salvage. In this situation it is not feasible to allocate that cost of removal or salvage among the vintages in a meaningful manner. For this reason, instead of prescribing net salvage depreciation rates for each vintage, we are prescribing a single net salvage depreciation rate which is to be applied to all new vintages until the next regular review. *See* FCC 82–53, FCC 82–353, and FCC 82–354.

E. *Conclusion*

25. Having considered the responses to the staff's review letters and public notice, the recommendations of the staff, and the proposals of the companies, we find the resulting SLELG rates listed in the Appendix to be appropriate rates to be applied, unless modified by further order of this Commission.[1]

V. Ordering Clause

26. Pursuant to Sections 4(i) and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i) and 220(b), IT IS ORDERED, That the percentages of depreciation set forth in the Appendix to this order are prescribed effective on the dates listed.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

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[1] We have today ruled that our depreciation prescription orders are binding at both the federal and state levels. *See* Amendment of Part 31, FCC 82–581, 48 FR 2324, (adopted December 22, 1982).

APPENDIX

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation
Calculated under the Equal Life Group Methodology for
CONTINENTAL TELEPHONE COMPANY OF VIRGINIA

Acct. No.	*Class or Subclass of Plant* (a)	*Year* (b)*	*Proj. Life* (c)	*Fut. Net Salv.* (d)	*Original Cost Rates — Age at Beginning of Year* 0.0 (e)	0.5 (f)	1.5 (g)	2.5 (h)	*Net Salv. Rate* (i = −d/c)
			(Yrs.)	(%)	(%)	(%)	(%)	(%)	(%)
221	Central Office Equipment								
	Microwave	1982	18	0	8.9	8.3	7.7	7.3	0.
	Circuit	1982	15	10	10.5	9.8	9.2	8.7	−0.7
	Digital Electronic	1982	21	3	5.6	5.5	5.4	5.3	−0.1
241	Pole Lines	1982	23	−50	11.9	8.7	7.2	6.4	2.2
242.1	Aerial Cable	1982	25	2	6.4	6.0	5.8	5.6	−0.1
242.2	Underground Cable	1982	37	10	3.4	3.4	3.4	3.4	−0.3
242.3	Buried Cable	1982	30	7	5.4	5.1	4.9	4.7	−0.2
242.4	Submarine Cable	1982	30	0	4.5	4.2	4.1	4.0	0.
243	Aerial Wire	1982	7	−66	31.2	20.9	16.4	14.1	9.4
244	Underground Conduit	1982	50	0	2.1	2.1	2.1	2.1	0.

*ELG rates are effective January 1 of the year shown in column b and are to be applied to plant additions for that year and subsequent years.

Ownership Joint, Carrier Facilities
Satellite Earth Stations
Satellite Earth Stations, Joint Ownership

Tentative Decision adopted to establish joint ownership policy governing the ownership and operation of domestic satellite earth stations providing MTS service in rural Alaskan communities.
—*Earth Stations*
CC Docket No. 80–584

FCC 82–516

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
Policies governing the ownership and operation of domestic satellite earth stations in the Bush communities in Alaska.	CC Docket No. 80–584 RM–3304

TENTATIVE DECISION

Adopted: November 18, 1982; Released: December 10, 1982

BY THE COMMISSION: COMMISSIONER JONES DISSENTING AND ISSUING A STATEMENT.

1. Before the Commission are applications for earth station facilities to provide message telephone service (MTS) to approximately 35 rural Alaskan Bush communities.[1] At each of these locations, an application for construction permit and license has been filed by Alascom, Inc. (Al-

[1] The term "Bush communities" refers to small villages in rural Alaska that are isolated from the larger cities by rugged terrain and harsh weather conditions. *See also* paragraphs 59–61, *infra*. Although additional services, such as private-line or video, may also be provided through these Bush earth stations, our focus in this proceeding is on MTS.

ascom),[2] which is certified to provide both intrastate and interstate toll MTS and private-line services in Alaska. In each of these communities the local exchange carrier, which is regulated and certified by the Alaska Public Utilities Commission (APUC), has also filed an application for Bush earth station facilities. We have found that such duplicative proposals for essential facilities in remote, isolated Bush communities of small populations are mutually exclusive because the public interest would not be served by grant of both.[3]

2. We decided that the best method to resolve these controversies was by rulemaking rather than by separate comparative hearings and we issued a *Notice of Proposed Rulemaking*.[4] Therein we sought comment on whether the public interest in this matter might best be served by requiring local exchange certification as a qualification to own and operate earth station facilities in rural Alaskan communities to provide MTS service.

3. On review of the record before us, we conclude that neither the adoption of the proposed rule, nor the administrative selection of one or the other of the applicants, would best serve the public interest. Instead, we find that joint ownership of the Bush earth stations by Alascom and the appropriate local exchange carrier would best serve the public interest. We adopt this Tentative Decision to implement these findings in an orderly fashion.

I. Background

4. The provision of Alaskan communications has been a source of controversy before this Commission for over a decade, dating to the time when the Alaska Communications System (ACS) was transferred by the Air Force to private industry. The winning bid for the ACS was to be selected by the Executive Department upon a competitive basis.[5] Congress indicated that in making the selection emphasis was to be placed upon the following factors: (a) the best plan for expanding the communications system in Alaska, with particular attention given to proposals for serving rural Alaska, and (b) the best proposal for reducing costs to the Alaskan ratepayers.[6] Alascom, established by RCA Corporation to acquire and operate the ACS, was the winning bidder.[7]

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[2] Alascom is a wholly-owned subsidiary of Pacific Power and Light Company, which acquired the corporation, formerly known as RCA Alaska Communications, Inc., from the RCA Corporation. *See* Alascom, Inc., FCC 79–305, released May 22, 1979. The current company, as well as its predecessor, will be referred to as Alascom throughout this decision.

[3] *See* note 12, *infra*.

[4] Domestic Satellite Earth Stations-Alaska Bush, 81 FCC 2d 304 (1980). The specific applications at issue in this proceeding are listed in Appendix A to the *Notice*.

[5] 40 U.S.C. § 771, *et seq*.

[6] "To authorize the Disposal of the Government Owned Long-Lines Communication Facilities in the State of Alaska", Hearing on S.223, Before the Subcomm. on Armed Services, 90th Cong., 1st Sess. 5028 (1967).

[7] *See* RCA Global Communications,Inc., 22 FCC 2d 200 (1970).

5. In 1971 Alascom and RCA Global Communications, Inc. filed applications with the Commission for authority to construct a satellite system to provide domestic communications services. Alascom's proposal included several applications for earth stations in Alaska to be used in conjunction with these satellites. However, in its early domestic satellite (domsat) policy decisions, the Commission questioned whether the facilities proposed by Alascom would meet the needs of the rural Alaskan communities.[8] In light of these concerns, which also were articulated by teh State of Alaska, the Commission required Alascom to submit detailed information concerning its plans for Alaskan facilities and services.

6. Alascom filed its "Alaska Communications Plan, 1974–1980" on September 20, 1974. The plan and comments it generated are fully detailed in the *Satcom Construction Order.*[9] In its plans, Alascom proposed to construct 38 small earth stations throughout the state. Using supplemental terrestrial facilities, these stations were to provide telephone service on a regular basis "to the estimated 108 communities with populations of 25 or more in rural Alaska that are presently without voice communications." *Id.* at 673.

7. The Governor's Office of Telecommunications was dissatisfied with Alascom's plan, and the State of Alaska objected to the plan for both economic and technical reasons. The State believed that the Alaskan ratepayers would be forced to bear an excessive portion of the system's costs and believed a much more efficient system was feasible. Nor was the State satisfied with Alascom's subsequent revision to increase the number of Bush earth stations to 100. Consequently, in 1975, the State legislature appropriated funding and the State filed competing applications at each of these sites.[10]

8. The Commission, recognizing the need for service to the Alaska Bush, found both applicants to be legally, technically and financially qualified to construct and operate the proposed Bush stations.[11] It also found the applications to be mutually exclusive.[12] However, the Commis-

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[8] Domestic Communications Satellite Facilities, 35 FCC 2d 844 (1972) *(Domsat II), recons, in part,* 38 FCC 2d 665 (1972) *(Domsat III).*

[9] *See* RCA Global Communications, Inc., 56 FCC 2d 660 (1975).

[10] The Alaskan legislature appropriated $5 million towards this effort. The State did not intend to operate the facilities. Rather it proposed to lease the stations to a carrier—Alascom or a local entity—offering the most favorable terms. It subsequently indicated that its actions were motivated in part by a desire to preserve the option that these facilities could be owned and operated by local carriers. *See* State of Alaska's Reply to Response to Petition for Continued Authorizations as Trustee, Application File No. W–P–C–1659. Although we indicated that a potential hearing issue could result from a licensee divorcing ownership from the operation of the facilities, we did not find it disqualifying *per se. Satcom Construction Order, supra* note 9, at 693.

[11] Reconsideration of this finding was requested by Alascom. However, in light of the State's applications being dismissed at its own request, reconsideration was never undertaken.

[12] The need for the Commission to warrant that competition is feasible and beneficial before authorizing duplicative communications facilities was recently reaffirmed by the D.C. Court of Appeals.

sion deferred final action on these applications as well as other controversies surrounding the provision of Alaskan services. The Commission anticipated that further informal proceedings and negotiations might resolve these matters without recourse to evidentiary hearings.[13]

9. In order to initiate service, the State and Alascom agreed to an earth station program and negotiated an interim arrangement for construction and operation of the facilities pending Commission action. Starting in 1975, a series of temporary authorizations were issued granting joint authority to Alascom and the State to construct the facilities. Alascom was granted temporary authority, as trustee, to provide common carrier services by means of these facilities. The temporary authorizations are expressly conditioned on the ultimate resolution of the question of who shall be awarded permanent authority to own and operate the earth station facilities.

10. Local exchange operators, comprised mainly of small, native-owned companies and non-profit cooperative associations, have since filed thirty-five applications to construct new earth station facilities or to acquire those currently operated by Alascom and jointly owned by the State. The State's applications were dismissed at its own request and it has indicated that it will convey its ownership interest to the ultimate licensee.[14] Operation of Bush earth stations by Alascom at the contested locations continues under temporary authorizations. At the approximately 65 Bush locations where there were no competing applications, formal radio station authorizations were issued to Alascom. These authorizations are subject to possible modification as a result of this proceeding.[15]

II. Comments

11. In response to the *Notice* we have received formal comments from eight parties, including the local exchange operators (OTZ Telephone Cooperative, Inc. and Mukluk Telephone Company, Inc. (OTZ/Mukluk), filing jointly, and United Utilities, Inc. (United); Alascom; the State of

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Telocator Network of American v. FCC, No. 78–2218 (D.C. Cir. Oct. 5, 1982), Slip op. at 40. The finding of mutual exclusivity for Bush earth station facilities was based on the conclusion that one facility could provide all the services proposed by either party, and that there did not appear to be any public interest benefits in the construction of duplicative MTS facilities in the Bush. *See Satcom Construction Order* at 689. None of the parties dispute this conclusion and we reaffirm it here.

[13] These further proceedings provided substantial assistance in addressing these issues. *See* RCA Global Communications, 61 FCC 2d 218 (1976). Most of these issues were finally resolved in the Alaska Facilities Decision, 74 FCC 2d 435 (1979), *recons. denied* 78 FCC 2d 359 (1980). The remaining issue is the ownership of the Alaska Bush earth stations. No progress beyond the interim arrangement was made in those further proceedings. *See Satcom Construction Order* at 699–700.

[14] *See* letter of May 29, 1980 in File Nos. 65–DSE–P–75 *et al.* The State's withdrawal appears to have been based in part on local exchange development. In a Statement released in October 1979, the Governor indicated that the willingness of the local carriers to compete for earth station ownership made it possible for the State to withdraw its applications.

[15] *See e.g.*, Alascom, Inc., Mimeo No. 00171 released October 10, 1980.

Alaska (State); the Alaska Public Utilities Commission (APUC); the Rural Electrification Administration (REA); the Federal Aviation Administration (FAA); and the National Telephone Cooperative Association (NTCA). An additional eleven parties filed informal comments or letters. These letters were received from entities such as Bush citizens, local governing bodies of Bush communities, associations and federations representing village councils, and State Senators and Representatives. Six parties filed reply comments.

12. The commenters are divided as to whether the Commission's proposal should be adopted. The local exchange operators favor adoption of the proposed rule. Also supporting adoption of the rule are the NTCA and the REA. The State of Alaska supports adoption of the rule in part. It believes that when two applicants meet specific minimum qualifications, a preference should be afforded to the local exchange operator. However, this preference, according to the State, should not apply to renewal proceedings.

13. Alascom, the APUC and the FAA oppose the rule. Both Alascom and the APUC state that the telephone network is a single technological and economic structure. Thus, in their view, a long-lines certificate, rather than a local exchange certificate, should be the basic eligibility requirement. The City of St. Mary's stated in a letter that, while it is not opposed to the eventual control by United of the earth station facilities in St. Mary's, it does not believe that the local exchange operator has yet achieved the requisite maintenance capability.

14. Basically, the local exchange carriers seek to control the interconnect facilities within their certified regions. They believe, as do all but one local commenting party, that the proposed rule serves the public interest because it provides for local control of essential telecommunications facilities. This, they assert, will allow them to play a more significant role in the planning and development of the Bush network. They also claim that, from an economic as well as management perspective, the viability of their local exchange is tied to such ownership. If the earth station facilities are included in their rate base, the local exchange carriers claim they will derive much-needed increased revenues from the settlements process. This in turn can be used by them to expand and improve local service in the Bush. Additionally, because REA financing can be obtained with low interest rates, the local exchange carriers contend they can improve services at lower costs to their subscribers than can Alascom. Local ownership, they contend, will inevitably result in a strong commitment to maintain and upgrade service at rates that are as low as possible.

15. From a management perspective, the local exchange carriers stress the importance of maintaining operational control over the facilities that often provide Bush communities with their only link to the outside world. Because the local exchange carriers believe Alascom's service and inter-

connection practices have not always been optimal, they believe they can significantly improve the services available to their subscribers. History indicates, according to the local exchange carriers, NTCA, and the State, that Alascom had to be coerced into extending service to the Bush. They believe that it was only due to the efforts of the State that the initial two channel system was provided. To improve services, one local carrier proposes to introduce equipment redundancy. All propose local and regional maintenance schemes that they believe improve upon the system Alascom currently employs.

16. Additionally, some who favor the adoption of the proposed rule believe that its implementation will result in a decrease in rates to the public. United states that such savings will result from the ability of local exchange operators to co-locate their local exchange facilities with the earth station equipment, thus obviating the need for an additional shelter. Also, the training of maintenance personnel to handle problems that relate to both earth stations and local exchange facilities will preclude the need for maintaining separate staffs. United also claims local ownership will avoid high air transportation costs because Alascom service personnel will not have to be flown to Bush areas. It also claims that its redundant earth station design will result in savings due to less frequent repair calls.

17. Finally, while the State of Alaska believes the proposed rule will serve the public interest, it also believes some showings concerning qualifications should be made by each applicant. According to the State, APUC certification should not be *prima facie* evidence that a local exchange operator is qualified to own and operate an earth station.

18. In opposing the proposed rule, Alascom claims that it will hinder Bush development, reduce service quality and increase cost of service to the Alaskan ratepaying public. According to Alascom, the increase in cost will result because of the inefficient and unnecessary replacement of existing earth station facilities, loss of savings due to Alascom's buying power, incentives of local exchange carriers to "gold-plate" earth station facilities, and the need for duplicative facilities and personnel which are unnecessary under Alascom's maintenance program. Operationally, Alascom insists that unified control is critical to the efficient operation of the Bush network. Earth station operations, it claims, require a high level of engineering coordination of equipment, frequency use, testing and other technical matters. Alascom believes that it is in a unique position to provide this capability. Alascom also argues that the adoption of the proposed rule will increase intrastate MTS toll rates due to the impact on separations and settlements.

19. Procedurally, Alascom argues that the proposed rule violates its hearing and due process rights under the *Ashbacker* doctrine, Sections 309(d) and 201(a) of the Communications Act, and Section 63.52(c) of the

Commission's rules. Alascom states that if the Commission does not grant it permanent authority under Title III to own and operate the Bush earth stations, it must be afforded a formal hearing.

20. The APUC joins Alascom in challenging the proposed rule. Its objections are based upon technical and procedural considerations similar to those of Alascom's. It believes that long-lines certification should be substituted for local exchange certification as a basic eligibility criterion.

III. Discussion

21. This proceeding is intended to determine in a generic fashion the appropriate ownership structure to be applied to earth station facilities located in the Alaska Bush. In so doing, our focus is the selection of a structure that best satisfies the communications needs of Bush residents. This process is more efficient and less costly than multiple comparative oral hearings. In the *Notice*, the Commission determined that:

> [w]hile there are some differences in the financial and technical details of the various proposals, each applicant appears reasonably capable of sustaining the requisite public interest findings. The issue for decision, therefore, is a determination of the appropriate entity to hold the earth station license.

81 FCC 2d at 305. Thus, we began this rulemaking proceeding with

> [o]ur central objective . . . to establish an ownership structure which satisfies the communications needs of the residents of the Alaska Bush communities in the most efficient and expeditious manner possible.

Id. at 310. In reaching a conclusion in this rulemaking proceeding, we are not, however, limited to "a choice between two operationally viable and distinct ownership patterns" as represented by the specific applications immediately before us. Rather, it is the objective of this proceeding to

> . . . permit broad participation by all interested parties in the decision making process and . . . better enable the Commission to develop an integrated plan for ownership of the Bush earth station facilities. The determination thereby derived will be equally applied to all applicants for Bush earth stations.

Id. at 315. All of the basic issues concerning Bush earth station ownership have been addressed by the parties in the record of this proceeding, as well as in the applications before us. Although service is presently being provided to Bush residents under interim arrangements, a resolution of this controversy is becoming more urgent with the passing of time. Service requirements are growing beyond the two channel lifeline services that have generally served the Bush communities until now. Service improvements are being delayed by the continuing uncertainties surrounding the resolution of the Bush earth station ownership question. A resolution to this controversy, rather than further extensive proceedings,

is needed to provide the incentives for an efficient and improved Bush communications network.

22. The comments, applications and our further analysis have persuaded us that sole ownership by the local exchange operators, as proposed in the *Notice*, or sole ownership by Alascom, as argued for by the opponents of our proposed rule, both have drawbacks. Selection of one or the other applicant could impair our ability to fulfill our statutory mandate "to make available, so far as possible, . . . a rapid, efficient, . . . wire and radio communication service with adequate facilities at reasonable charges". 47 U.S.C. § 151. Because we find there are detriments associated with either the local operators or Alascom having sole ownership, we have examined alternative ownership arrangements which might alleviate these problems, at least for the interim. It appears that a joint ownership arrangement would allow Bush residents to take advantage of the strengths of each of the contending entities, and we have tentatively adopted this approach as the resolution to this proceeding.

A. *Ownership by Local Exchange Operators*

23. In the *Notice* we stated our belief that the local exchange operators would be capable of fully demonstrating their qualifications to own and operate Bush earth station facilities. However, after reviewing the comments of Alascom, the FAA, the city of St. Mary's, and the APUC, we are not persuaded that the local exchange operators have demonstrated sufficient technical expertise to be the sole licensees of the Bush earth stations, independently responsible for the entire range of earth station design and operating decisions.

24. The record does establish a need for local presence in operating and maintaining the Bush earth station facilities. The local operators are unquestionably capable of performing routine, daily maintenance functions.[16] Relying on the technicians employed by the local exchange operators to perform such routine maintenance functions would also avoid duplication of Alascom's personnel. However, problems pertaining to higher level maintenance and repair functions of local facilities are documented in the record. For example, United, who appears among the local operators to be the most technically capable, has experienced service restoration problems during a serious outage in its telephone exchange service at St. Mary's. This outage prompted the Mayor to question United's current ability to manage the Bush earth stations. We believe, however, that the local exchange operators, with the assistance of Alascom and/or equipment suppliers, could one day clearly demonstrate

[16] For example, *see* contract between the Arctic Slope Telephone Association Cooperative, Inc., (ASTAC) and Alascom setting out responsibilities and training to be provided (filed in the Reply Comments of the NTCA, Exhibit 1).

such qualifications. But, at the present moment, review of the record suggests potential problems concerning local exchange operators unilaterally installing and maintaining a fully compatible earth station network that efficiently interfaces with Alascom's space segement.[17]

25. We are also influenced by the fact that the APUC in its comments states that it has not considered earth station ownership and operation in certificating any of the local exchange companies. Moreover, in APUC proceedings involving two of these companies, small earth station issues were specifically excluded from consideration.[18] Thus it appears that our initial intent to rely upon APUC certification of local exchange carriers as a definitive indication of qualifications to operate successfully Bush earth stations cannot stand.

26. We perceive little, if any, advantage to be gained by vesting sole ownership in local exchange operators if the concomitant operational responsibilities of a sole licensee are not also assumed at the same time. The record does not appear to support the conclusion necessary to effectuate our proposed rule, that local exchange certification assures full operational qualifications. In most cases, the local exchange operator would simply assume ownership of existing facilities from Alascom; this does not in itself demonstrate expertise to apply satellite technology to Bush communities. Moreover, where new but similar facilities are proposed by the local exchange carrier to replace existing satellite facilities (as is the case with United in some locations),[19] we see an additional problem. Specifically, there is no demonstrated record that sufficient improvements in service quality or reduced rates would result so as to warrant replacement of the investment in embedded Bush earth station facilities. Apart from issues involving channel capacity and redundancy, which can be easily remedied by installation of additional equipment, no party has demonstrated any flaws with the basic design and operation of the present Bush network.

27. We also find that our original proposal could lead to situations in which purely local Bush interests could conflict with statewide needs. In the *Notice*, we indicated the desirability for a coherent Bush-wide operational design to insure efficient and economical network operation with compatible equipment at each Bush location. Thus, while Alascom has statewide sevice responsibilities, the local carriers do not. Incentives could therefore exist to perceive network planning and coordination problems from the narrower perspective of a local carrier's limited service

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[17] Over 70% of Alaskan toll circuits are routed by satellite. Compatibility is a particular concern in our evaluation of Bush earth station ownership by local exchange operators since 65% of the Bush stations are presently authorized solely to Alascom. *See* paragraph 10, *supra*.

[18] *See* comments of the APUC at 13. The carriers involved were United and ASTAC.

[19] *See* File Nos. 932 and 937–DSE–P/L–80.

requirements. Such a perspective could conflict with sound network operations.

28. Finally, it is also possible that adoption of our proposed rule could retard the expension of satellite network facilities throughout the entire Bush earth station system. This would hinder the Commission's goal under § 1 of the Communications Act of 1934 to ensure the expeditious development of Alaskan service. Our proposed rule would in some sense relegate Alascom to a caretaker's role in the 65 presently uncontested locations until a local carrier was in a position to assume the responsibilities of owning and operating the earth stations. Alascom would thus lack the incentive to upgrade these facilities, a potential result in conflict with our statutory objectives.

B. *Ownership by Alascom*

29. Next we examine sole ownership by Alascom. Just as we believe there are good reasons for not adopting the proposed rule, we conclude that valid reasons also exist for not granting sole ownership to Alascom. It does not have any vested rights in Bush earth station licenses, nor has it been awarded any exclusive rights to toll facility authorizations.[20] Thus, it is incumbent on Alascom to demonstrate any unique capabilities it has to provide superior services to the Bush communities before it alone is found to be the only eligible entity to hold all of the Bush earth station licenses. Alascom has not made this case in the record before us. Alascom has demonstrated extensive technical and operating capabilities. But it also appears to have been reluctant to expand service in the Bush. The State, Bush residents and the local exchange carriers have all expressed dissatisfaction concerning the service provided to Bush communities by Alascom. In fact, as we have previously indicated, one of the reasons given by the State when requesting that its applications be dismissed was the willingness and ability of the local exchange carriers to apply for the facilities it had constructed jointly with Alascom under the interim arrangements. The State believes the Alascom, which has repeatedly underscored the financial and operational burden Bush facilities impose,[21] is reluctant to pursue an adequate Bush program.[22] While these incidents

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[20] *See* RCA Alaska Communications, *supra* note 7 at 204; and CC Docket No. 78–72 adopted today. Nor have we required all MTS services to be provided over a single satellite system. *See* National Satellite Services, 43 FCC 2d 1141 (1973).

[21] *See e.g.*, Alascom's Comments in CC Docket No. 78–72, filed March 3, 1980.

[22] Examples of Alascom's reluctance in this regard have been provided in proceedings both before the Commission and before the APUC. Alascom resisted constructing the necessary facilities to interconnect the local exchanges of OTZ to the toll network. *See e.g.*, File No. W–P–C–1659. It also failed to upgrade facilities at Gambell and Savoonga in United's service area. *See e.g.*, File Nos. 932, 937–DSE–P/L–80. Alascom has also stated its belief that construction of local exchanges in these extremely remote areas, while desirable, probably lacks an adequate revenue base to support such service.

do not rise to a level at which we would question Alascom's basic qualifications, we find them indicative of disincentives to optimize Bush service levels in favor of higher density, more profitable services. And, although the State asks that local exchange qualifications be verified, it has indicated that it still would prefer ownership by the local exchange to ownership by Alascom.

30. However, the most significant detriment we perceive to Alascom's being the sole licensee of the Alaska Bush earth stations in the perpetuation of its total control over what appear to be the only facilities economically practical to provide MTS to the Alaska Bush communities for the indefinite future. While the applications for sole ownership by the local exchange carriers do not appear to be comparatively advantageous under current circumstances, they do appear to represent the bona fide intention of the exchange carriers actively to begin to participate in the operation of Bush earth station facilities. We do not believe the objectives of the Communications Act or our domestic satellite policies would be well served by thwarting such endeavors in their incipient stage. We therefore do not wish to foreclose additional participation in this network by licensing every station solely to Alascom. Over 65 Bush stations already will be licensed to Alascom, in addition to the mid-route stations not at issue in this proceeding. Thus, Alascom will remain by far the dominant Alaskan earth station licensee.

31. Local exchange operations require on-site personnel to maintain the exchange plant. Such personnel can also assume substantial responsibility for proper operation of the earth station facilities at this time to reduce service outages without duplication of the efforts of Alascom.[23] While the contract that exists between Alascom and ASTAC is a constructive attempt to involve one local exchange opertor in Bush earth station operations, we do not believe it sufficient when a more active desire to participate has been manifested.

32. The local exchange operators also have the incentive to operate and develop the earth station facilities to tailor the services desired by Bush ratepayers. Thus, we believe that they should play a significant role in the design and operation of the network if they are willing and capable. Generally, the local exchange carriers are themselves residents of the Bush. They are familiar with the needs of the residents of these communities and are concerned with providing a more effective means of predicting and satisfying the growing communication needs of rural Alaska. And, because they themselves must rely on Bush communication services and facilities, they have incentives to improve the services which link

[23] United's comments set forth examples of problems where duplicative staffing exists. On the other hand, the Alascom/ASTAC contract is a model of contractual obligations that appears to work. We have received no complaints to date.

their isolated communities with the rest of the world. An opportunity to participate in the ownership and operation of the Bush earth stations would therefore re-inforce these incentives.

33. Sole ownership of the Bush earth stations by Alascom would remove substantial incentives to the local exchange oeprators to contribute to the development of this network. There are also other benefits that we consider important that would be denied Bush ratepayers if we were to grant sole ownership to Alascom. These include increased carrier accountability to the people served, joint participation in the network planning process, and, as previously mentioned, increased attention to the development of service within the Bush communities.[24] To exclude local exchange carriers from all participation in planning the Bush satellite network would effectively preclude them from gaining experience in domestic satellite communications and eventually making meaningful contributions to the development of the art.[25]

C. *Joint Ownership*

34. Based on the extensive record before us, and in view of the detriments which appear to exist in each of the ownership patterns presented in the applications, we find no reason to select one applicant over the other. Indeed, it appears that the public interest would be disserved by promulgating a rule which would effectively chose either of the applicants to be the sole licensee of the Bush earth stations. Both Alascom and the local exchange carriers have particular strengths that complement the weaknesses of the other. To grant sole ownership to one of the applicants would deny ratepayers the several benefits associated with the other. Moreover, the incentives of each differ somewhat. Combining these incentives in a joint undertaking should therefore provide a balance that will be in the best interests of the residents of the Bush communities.

35. First, the record demonstrates that, with the exception of Alascom's current ability to perform adequately routine daily maintenance in the Bush communities, its technical qualifications to design and operate the Bush network are unquestioned. The local carriers, on the other hand, have not fully demonstrated in practice their technical capabilities beyond routine maintenance functions. Second, we have recognized a desire for a coherent, Bush-wide operational design to enhance smoothly operating functions. We believe that Alascom's existing Satellite Communications Transmission Plan provides for such a unified network. The overall development of this network will be further improved by Al-

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[24] Participation in Bush earth station ownership and operation will also provide local exchange operators with more experience in the provision of private-line services. See Comments of FAA in this regard.

[25] *Cf.* Winter Park Telephone Company, 84 FCC 2d 689 (1981).

ascom's research and development efforts. Conversely, the local carriers have less reason to consider the progress of the network as a whole, and have far more limited resources to invest in research and development. Third, we also believe it desirable, as Alascom proposes, to retain existing facilities. Increasing channel capacity and reliability to levels desired by the local residents can be accomplished by adding equipment. This, we believe, is preferable to the proposal of at least one local carrier to incur additional costs by replacing embedded equipment without demonstrating sufficient benefit to the ratepayers. Fourth, the record establishes that the local carriers are fully qualified, and, due to their on-site personnel, better suited, to perform routine earth station maintenance that need not duplicate Alascom's efforts. Furthermore, over time they can gain the necessary experience to convincingly demonstrate their full qualifications. Such a result would be delayed, or perhaps foregone, if we preclude their participation in domsat technology by granting sole ownership to Alascom. Fifth, we conclude that the local exchange carriers, whose only customers are Bush residents, and who themselves are often residents of Bush communities, have the greatest incentive to provide the highest quality service. This factor, we believe, is important in light of Alascom's alleged lack of commitment to provide more than lifeline services to some Bush communities. Finally, by providing the local exchange carriers with an ownership interest, we will reinforce this incentive to providing them with an increased opportunity to plan for, and operate, portions of the Bush network in ways desired by Bush residents.

36. Thus we conclude that the appropriate resolution of this controversy that best serves the public interest is to adopt a policy pursuant to which Alascom and the local carrier are *jointly* authorized to plan, construct and/or operate these stations. Such a policy alleviates many of the difficulties identified above while preserving the affirmative advantages associated with each entity.

37. The Commission has determined previously that the public interest would be best served by joint ownership and operation of earth stations by different entities. For example, it found joint ownership of earth station facilities used in the global commercial satellite system desirable.[26] In that case, basic policy considerations transcended the arguments of the individual applicants competing for specific stations. A similar joint ownership policy was adopted for the MARISAT system.[27] There the Commission authorized Comsat to construct three satellites to be used as part of a system intended to serve the Department of the Navy

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[26] Ownership and Operation of Earth Stations, 5 FCC 2d 812 (1966).

[27] Communications Satellite Corporation, 40 FCC 2d 496 (1973). *See also* American Telephone and Telegraph Company 37 FCC 1151 (1964) (TAT–4) (joint ownership of an underseas cable instead of choosing between competing proposals.

as well as to provide maritime communications services to other commercial maritime users. However, the authorization was conditioned to require Comsat to offer any U.S. carrier then providing maritime services the opportunity to participate with Comsat in the ownership and operation of the proposed system. This included both the joint provision of leased channel service to the Navy and competing maritime telex services. In both of these cases, the policy objective of joint ownership was to permit participation by all qualified entities in the construction and operation of initial facilities serving a market where competitive entry by multiple entrants did not appear, at least in the beginning, economically feasible.

38. We conclude that a similar approach is particularly desirable in the Alaska Bush. Joint ownership will afford each applicant a reasonable opportunity to participate in the development of Bush communications while allowing the ratepayers to profit from the benefits associated with each entity. Thus, neither Alascom's extensive experience and capital resources nor the local carriers' on-site availability of personnel and special knowledge of the communications needs of the Bush residents will be lost.

39. Through joint ownership Alascom will be able to share its experience with the local exchange carriers. As local personnel located on-site work with personnel from Alascom, we expect their knowledge of earth station operations to become more sophisticated. This, in turn, will greatly reduce, and perhaps eventually eliminate, the number of times maintenance staff will need to be dispatched to the Bush from metropolitan areas. We also believe that the local exchange carriers' concern for optimal development of communications service to the Bush, tempered with Alascom's understanding of the network as a whole, will provide the best service to the Alaskan ratepayers and will result in the most orderly, efficient and equitable means for planning and operating the Bush network.

D. *Procedural Authority*

40. Alascom has argued, in opposing the proposed rule, that its hearing and due process rights under the *Ashbacker* doctrine,[28] Sections 309(d) and 201(a) of the Communications Act, and Section 63.52(c) of the Commission's rules are abridged. According to Alascom, if the Commission does not grant it permanent authority under Title III to own and operate the Bush earth stations, it must be afforded a formal hearing. We disagree. It is undisputed that the Commission may elect to use its rulemaking power when the pertinent issues involve questions of policy. We

[28] Ashbacker Radio Corporation v. FCC, 326 U.S. 327 (1945).

examined our procedural authority to decide the ownership question by rulemaking rather than comparative hearing in our *Notice*, *supra* note 4. There we observed that it is well settled that the Commission has broad latitude when formulating rules and policies which effectuate its responsibilities under the Communications Act. Thus, procedural questions are left to the Commission's informed determination, bearing in mind, of course, that it must protect private rights and the public interest.[29] The choice between proceeding by rule or *ad hoc* adjudication lies primarily in the informed discretion of the agency.[30] Nor is the propriety of a rulemaking proceeding lessened because this procedure was followed to avoid numerous Section 309(e) hearings. "So long as the Commission remains within the bounds of its statutory authority, it may pursue a procedural route it deems superior to one it fears will be unduly time-consuming or burdensome." (footnote omitted)[31]

41. Our decision to proceed by rulemaking is a particularly sound administrative choice under the circumstances presently before us. Unlike most cases involving mutually exclusive applications, our determination of an appropriate Bush earth station ownership structure will not deprive either Alascom or the local exchange carrier the opportunity to continue with their present business functions in the locality in question. Local telephone service will still be provided solely by the local exchange carrier certified by the APUC. The design and operation of the Bush earth stations will not be changed in any basic respect. Alascom will continue functioning in its role as the dominant Alaskan toll carrier responsible for the overall design and operation of the Alaskan toll network. The basic issue before us is therefore how the respective functions and responsibilities of the two applicants are to interface at the Bush earth station where they necessarily meet to provide MTS toll services to the Bush residents.

42. Proceeding by rulemaking provides a more effective context for defining the respective roles of these common carriers in providing MTS services to the Alaska Bush than would an adversarial proceeding. Alascom, in its pleadings, states that it has raised many issues concerning the qualifications of the local exchange carriers to be earth station licensees. It has not, however, disputed their qualifications to provide local Bush MTS services as certified by the APUC. This operating presence, together with other evidence in the record, leads us to conclude, despite Alascom's assertions to the contrary, that the local exchange carriers have established their technical and financial qualifications to participate

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[29] FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1940); *See also*, FCC v. Schreiber, 381 U.S. 279 (1965) and Sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. §§ 154(i) and (j).

[30] SEC v. Chenery Corp., 332 U.S. 194, 203 (1947).

[31] Telocator Network of America v. FCC, *supra*, note 12, at 57.

in the joint ownership of the earth station facilities. As previously stated, there is no question concerning their technical qualifications to perform the routine, daily technical maintenance functions involved with earth station ownership and operation. In fact, we believe they are in a better position to do so than is Alascom. This we find sufficient to qualify them to participate as joint owners in the Bush earth stations. Additionally, the REA has indicated a willingness to provide funding for such facilities. This too is sufficient to demonstrate the financial qualifications of the local exchange carriers.

43. In the *Notice*, we discussed the factors which we then believed warranted ownership of the Bush earth stations solely by the local exchange operators as a matter of general policy that would best serve the public interest. None of the parties has convincingly demonstrated that such an ownership policy would be infeasible or contrary to the public interest. Rather, the record developed in this proceeding leads us to conclude that joint ownership, rather than sole ownership by either Alascom or the local operators, will provide the Bush residents with the best service. We believe, however, that had we adopted the proposed rule, most, if not all, of the local operators would have been able to demonstrate their qualifications to solely own and operate the Bush earth stations as originally contemplated in our *Notice*.

44. The exhaustive record we have developed in this proceeding has provided us with sufficient information to enable us to make a policy determination that joint ownership provides the ownership structure that will most effectively satisfy the communications needs of the Bush residents. Our authority to implement this resolution comes from Sections 214(c) and 303(r) of the Communications Act of 1934. Thus, in the Tentative Decision we are adopting today, we do not deny the application of any party, but rather grant them all, with the condition that each amend its application to comport with the other. See 47 U.S.C. § 303(r). Furthermore, Section 214(c) permits the Commission to "attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require." 47 U.S.C. § 214(c). We conclude that the record demonstrates that the public convenience and necessity will best be served by joint ownership of the Bush earth station facilities. We therefore believe oral comparative hearings are unnecessary and would add nothing to aid us in making a better decision. They would only burden the parties with additional, unnecessary costs. This is especially true of the local operators who do not have available to them the extensive resources of Alascom.[32] To the extent a hearing is required, we conclude that this rulemaking proceeding affords all interested parties an opportunity to voice their concerns about fashioning a policy to govern Bush

[32] *See, e.g.*, Mukluk Telephone Company, FCC 80–551 released October 2, 1980.

earth station ownership. The consensus urges prompt resolution, and the record justifies the conclusion that joint ownership best serves the public interest.

45. Consideration of alternatives to a proposed rule is permissible in the context of a rulemaking proceeding. Notice is sufficient "if it affords interested parties a reasonable opportunity to participate in the rulemaking process,"[33] and if the parties have not been "deprived of the opportunity to present relevant information by lack of notice that the issue was there."[34] Interested parties have been advised that the purpose of this proceeding is to establish the ownership structure that will best satisfy the communications needs of Bush residents. The Administrative Procedure Act requires only that the notice of proposed rulemaking contain "either the terms or the substance of the proposed rule, or a description of the subjects and issues involved." 5 U.S.C. § 553(b)(3). We believe the parties had sufficient notice that we would consider all reasonable alternatives to the proposed rule. However, because none of the parties expressly proposed or analyzed joint ownership, we are today adopting a Tentative Decision which contemplates joint ownership of the Bush earth station facilities and will entertain further comments on that proposal.

46. Alascom continues to argue that under Section 201(a) of the Communications Act it is entitled in the first instance to an "opportunity for hearing" regarding interconnection between it and the local exchange carriers. As we stated in our *Notice*, to the extent Alascom views a decision in this proceeding to be a significant alteration of its Section 201(a) responsibilities, this proceeding has provided it with an opportunity to voice its concerns.[35]

47. Finally, Alascom persists in arguing that due process of law and the *Ashbacker* doctrine requires us to determine the ownership question on a case-by-case basis. As we have previously stated, the circumstances of this proceeding militate against individual proceedings. Congress intended that the Commission be vested with broad procedural discretion when formulating new policy for an industry. The policies proposed today are based upon the Commission's assessment of the nature of communication services in the Alaskan Bush and how we believe the public interest best will be served. This proceeding has provided an adequate opportunity to Alascom as well as all interested parties to submit all information deemed by them to be relevant. No party has offered any facts or specific lines of inquiry that we believe necessitates separate evidentiary hearings at each location. Accordingly, we believe this proceeding to be consistent with due process of law.

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[33] Forester v. Consumer Product Safety Commission, 559 F.2d 774, 787 (D.C. Cir. 1977).

[34] Chicago v, FPC, 458 F.2d 731, 748 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 1074 (1972).

[35] *See* Bell Telephone Co. of Pennsylvania v. FCC, 503 F.2d 1250 (3rd Cir.) *cert. denied*, ... (1974).

IV. Tentative Decision

48. We find, based on the record before us, that joint ownership of Alaska Bush earth stations best serves the public interest, convenience and necessity. We believe that telecommunications services in Alaska will be developed best by combining the contributions that both Alascom and the local carriers are able to offer to the operation and development of the Bush earth station network. This is particularly important because essential communications service is involved. We must also determine how best to implement our decision.

49. We tentatively conclude that to be eligible to hold a Bush earth station license, an applicant must either be certified by the APUC as a local exchange operator within the commuity to be served by the earth station or be certified by the APUC or the FCC as an interexchange carrier. When applications are already on file, or are filed in the future, by more than one qualified entity satisfying the above requirements, the Commission will issue authorization to the applicants jointly, conditioned upon their modifying their applications to conform with one another. Parties will not be required to amend their applications until after the Commission issues its final order in this proceeding. Upon issuance of joint authority, parties will be required to negotiate a contract within 60 days.

50. We recognize that establishing a workable joint ownership arrangement will present a significant challenge to Alascom and the local exchange carriers.[36] We therefore believe it prudent to allow the parties an opportunity to air those issues that must be addressed before the detailed planning and negotiations needed to productively implement this policy can begin. Thus, we will allow the parties 60 days from the release of this Order to submit comments concerning the terms and conditions they believe should govern joint earth station ownership and operation. We encourage the parties to work together in order to formulate the overall mechanism to achieve this objective practically.[37] We believe that the cooperation of the parties involved is needed to end a controversy whose continuance will do nothing to promote the interests of the Alaskan ratepayers.

51. One of the basic issues that has to be addressed is the relative ownership of the Bush earth station facilities in the absence of agreement between the parties. Ownership share must, of course, be directly related to the share of investment and operating costs subscribed to by each

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[36] During the comment period specified below, the parties can, of course, take exception to our tentative resolution.

[37] We would expect that the interim arrangement between Alascom and the State and the Alascom/ASTAC contract for routine Bush earth station maintenance would form a good starting point for formulating the details of how this ownership structure should be implemented.

party. In the event that each party would be willing and capable of assuming all the costs of Bush earth station operations, we believe it essential that one have a 51% ownership share. An equal ownership split could lead to deadlocks requiring frequent Commission intervention. Thus, either Alascom or the local exchange carrier should have majority ownerhsip.

52. Alascom is ultimately responsible for the operational and technical integrity of the Alaskan toll network. It also has broad expertise and experience with satellite communications technology. These factors weigh in favor of assigning the controlling share to Alascom. On the other hand, the local exchange carriers appear to be able to develop services that are more closely tailored to the particular needs of the Bush residents. Majority ownership may also allow the local exchange carrier to expand its participation in the Alaskan telecommunications market. In view of the practical difficulties attendant to coordination among the diverse entities which will make up this system, we believe that Alascom should retain control. Thus, we shall allocate to Alascom up to a 51% ownership share.

53. Also, we believe it is preferable, in the first instance, for the parties themselves to define their respective operational roles in the Bush satellite network. However, a few basic principles are apparent from the record in this proceeding. For example, Alascom, as the dominant intrastate and interstate Alaskan satellite carrier, should maintain overall responsibility for the operation of an integrated and efficient Bush network. Alascom's "Satellite Communications Transmission Plan" should be used as the basis for planning the design and operation of Bush earth station facilities.[38] We expect, however, that local exchange carriers will actively contribute to updating this plan in the future, especially as it pertains to new channel, service and reliability requirements. Joint decisions should include traffic allocations and circuit requirements as well as the implementation of technical improvements. These should be incorporated into the plan as they are made. The record demonstrates that the parties have previously participated in such joint planning in, for example, arriving at trunk forecasts.[39] We recognize that difficulties were experienced in this joint planning process, but believe this was most likely a result of the unresolved status of the ownership of the facilities.

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[38] The "Alascom Satellite Communications Tramission Plan" is a detailed description of Alaskan earth station parameters, transponder allocation plans, and other technical and operational specifications. The most current version filed with the Commission is dated November 1979.

[39] *See* comments of Alascom at 72. Joint planning is a commonplace practice between AT&T and independent telephone companies in the contiguous 48 states. Also, the INTELSAT system is an example of a satellite system where some hundred independent countries cooperatively design and operate a sophisticated global satellite network.

With the resolution of this issue we expect the parties will be able to expand and improve upon this existing process.

54. Contributions to capital investment and regular operating and maintenance costs should, of course, be made by the parties in proportion to their ownership shares.[40] Upon assignment of part of an existing facility to a local exchange carrier, payment should be made to Alascom by the local carrier of its proportionate share of the original cost less accumulated depreciation. The arrangements for so doing will be agreed upon by the parties and submitted to the Commission and the APUC for review.[41]

55. Although Alascom has argued that a policy of licensing Bush earth stations to the local exchange carriers will result in a shift of revenue requirements to the intrastate jurisdiction through the operations of the Separations Manual, none of the parties has demonstrated sufficiently concrete results that would modify the technical and operational findings we have made above.[42] Absent a persuasive economic analysis of the impact of Bush earth station ownership on the ratepayers, we believe the ownership structure described above represents a reasonable allocation of costs and responsibilities for MTS services between Alascom and the local exchange carriers. Furthermore, any shift in revenue requirements can more appropriately be accommodated through the separations process or, if necessary, in a Joint Board proceeding.

56. The parties are therefore on notice that the Commission will use the comments they submit to fashion a final ownership plan. Such a plan will resolve any outstanding controversies and will form the basis for the definitive arrangements to be negotiated by the parties. Thus, we believe it is preferable that the parties involved submit detailed responses concerning the issues we have outlined above, as well as any other implementation issue they believe necessary to bring to our attention. We also urge them to make every practical effort to reach consensus on the implementation of this joint ownership policy. We believe that the status of the Bush

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[40] Our decision does not anticipate or authorize participation by the local exchange carriers in either Alascom's space segment operations or its earth station operations outside the Bush communities.

[41] The State of Alaska may also have to be included insofar as the disposition of its initial investment in Bush earth station facilities may not have been settled.

[42] Although Alascom has submitted figures on its estimate of the impact of local exchange ownership on the separations and settlements process, the case is clearly overstated. It claimed tht $14 million in annual revenue requirements would shift from interstate to intrastate MTS. *See* Alascom Comments at 92. However, any actual shift would be much less. For example, Alascom appears to have significantly overstated Bush earth station investment costs. Furthermore, it assumes that a total of 150 Bush earth stations are transferred completely to local exchange operators rather than the 35 partial transfers at issue here. Thus we could not, in any event, rely on the cursory and overstated results alleged by Alascom in our deliberations on the appropriate Bush earth station ownership structure.

applications must be resolved and believe further extensive proceedings will serve no useful purpose.

57. In our *Notice* we also requested comments concerning the physical point of interconnection between the parties. However, because Alascom will have an ownership interest in all earth stations, this question does not appear to require resolution by us as a practical matter. Rather, this question, if it does in fact have to be decided, will be answered in a way that is consistent with the definition of the respective operation responsibilities of Alascom and the local exchange carriers.

58. In the *Notice* we raised the question of whether authority pursuant to Section 214 of the Act should be required of the local carriers who own and operate Bush earth station facilities. It has been our policy in the past to require that all operating transmit/receive earth stations initially obtain Section 214 certification.[43] In particular, we have found that the Bush earth station facilities are part of interstate channels of communication and therefore are "part of an interstate line" within the meaning of Section 214(a)(1).[44] This is so even if the facilities are located entirely within the boundaries of a single state and provide interstate service only through connection with the facilities of an interstate carrier.[45] However, we see no purpose to be served by the filing of separate applications for Section 214 authorizations pursuant to the procedures of Part 63 of our rules. Any information needed to make the public interest findings required by Section 214 has already been compiled in the record of this proceeding, and formal applications for such authority would only be duplicative of this record. Thus, the radio station authorizations for the Bush earth stations will also comprise the necessary Section 214 certification for the joint owners.[46]

59. Our joint ownership policy is intended to apply only to those small isolated communities traditionally thought to comprise part of the Alaskan Bush rural population. This policy, like our proposed rule, will apply only to earth station facilities that are intended to provide public message telephone service as defined in Section 21.2 of the Commission's Rules. Thus, it will apply only to those earth stations that are proposed to be operated in conjunction with a local exchange service. Our purpose is to establish a policy that avoids duplication of earth station facilities needed

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[43] American Telephone and Telegraph Company, 89 FCC 2d 1116, 1125 (1982).

[44] *Satcom Construction Order, supra* note 9 at 692, n. 29. *See also,* California Interstate Telephone Company v. FCC, 328 F.2d 556 (D.C. Cir. 1964).

[45] *See* General Telephone Co. of California v. FCC, 413 F.2d 390 (1969). There the court upheld a Commission decision that found connecting carriers were not exempt from the provisions of Section 214 when they construct facilities as part of an interstate channel of communication even though the facilities are located within a single state.

[46] *Cf.* Orbital Deployment Plan, 84 FCC 2d 584, 612–613 (1981); Competitive Carrier Rulemaking, 85 FCC 2d 1, 45–46 (1981).

to provide essential public message telephone service to these small communities when, for economic reasons, mutual exclusivity exists.

60. In our *Notice*, we attempted to limit the applicability of our proposed rule to those communities having the physical and geographical limitations which justify this unique regulation. Thus we chose to exclude the 32 largest Alaskan cities. In listing these cities, however, we relied on a list of communities in which Alascom presently operates mid-route stations. As a result, three of Alaska's largest cities, Fairbanks, Juneau, and Ketchikan, were not included; and some communities generally considered to be Bush communities, such as Aniak, Fort Yukon, Iliamna, and Sand Point, were included. We take this opportunity to clarify our definition of the Alaska Bush.

61. The policy we are adopting today will pertain to communities of less than 1,000 citizens. This is not, however, to be considered a definition without exceptions. If a showing can be made that the community in question is not isolated or is generally accessible, *i.e.* a community not considered to be located in the Alaska Bush, then it too will be excluded from the coverage of this rule.

62. Our intent is to apply this policy to the applications presently contested in the 35 Bush locations listed in Appendix A of our *Notice*. Additionally, if two applications are filed for a Bush earth station in the same Bush community, joint ownership will also be applied in any such future mutually exclusive situations. If the parties involved do not believe, based upon experience at that time, that our joint ownership policy is the most practical solution to the Bush earth station ownership question, either may file a petition incorporating their proposed ownership changes. The burden will be on the party proposing such a change to demonstrate that an alternate plan would better serve the public interest. Absent such a showing, joint ownership will be adopted as the appropriate means of resolving such future controversies.[47]

V. Conclusion

63. In view of our discussion with respect to the economic mutual exclusivity of duplicative earth station facilities in Bush communities, the

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[47] Section 309(b) of the Communications Act of 1934 declares, in part, that no application for a common carrier license shall be granted by the Commission earlier than thirty days following issuance of a public notice by the Commission of its acceptance for filing. Among other things, this provision is designed to give interested parties a thirty-day opportunity to learn of, and act upon, the filing of an application. To comply with our need for an orderly administrative procedure to prevent processing disruptions by late filings, we believe that any competing applications for Bush earth stations should be filed within this thirty day period in order to be considered mutually exclusive. A competing application filed after that date will be returned as unacceptable for filing due to its untimeliness. To ensure that all interested parties are aware of a filing, an applicant must file copies of its application with the APUC, and with Alascom or the local exchange carrier, as appropriate, and include proof of such service with its application to the Commission.

benefits and detriments associated with each applicant, our policy of encouraging new entry into the domsat field and our desire to encourage local participation in the ownership of essential telecommunications facilities, it appears that further extensive proceedings will not serve the public interest. Hence, we tentatively conclude that the Bush earth station facilities should be jointly owned by Alascom and the appropriate local exchange operator.

64. A regulatory flexibility analysis is not required in this proceeding because the proposed rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605(b). Only three applicants in this proceeding are potentially affected and this is not a substantial number.

65. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 214(c) and 303(r) of the Communications Act of 1934, that the policies set forth in this document are adopted as a Tentative Decision in the CC Docket No. 80–584. Interested persons may file comments on or before February 7, 1983 and reply comments on or before March 11, 1983. All relevant and timely comments filed in accordance with Section 1.415 and 1.419 of our Rules and Regulations will be considered by the Commission before final action is taken in this proceeding.

66. Members of the public are reminded that from the time the Notice of Proposed Rulemaking was issued in this proceeding until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in proceedings such as this one.[48] An *ex parte* contact is a message (spoken or written) concerning the mertis of the rulemaking made to a Commissioner, a Commissioner's assistant, or other decision making staff members, other than comments officially filed at the Commission or oral presentations requested by the Commission with all parties present. A summary of the Commission's procedures governing *ex parte* contacts in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554, (202) 632–7000.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

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[48] *See* Sangamon Valley Television Corp. v. U.S., 269 F.2d 221 (D.C. Cir. 1959).

November 18, 1982

DISSENTING STATEMENT OF COMMISSIONER ANNE P. JONES

IN RE: POLICIES GOVERNING THE OWNERSHIP AND OPERATION OF DOMESTIC SATELLITE EARTH STATIONS IN THE BUSH COMMUNITIES IN ALASKA

I dissent from the majority opinion in this case because I believe that the result it recommends will not serve the interests of the Alaska ratepayers it purports to protect. First, I am bothered by the way the concept of mutual exclusivity is applied in this case. I recognize that Alaska is a unique situation and that the communities involved here are very small. I also recognize that having more than one transmit/receive earth station in these communities may appear to be economically irrational. I am not willing to say, however, that these facts should absolutely bar every application for a second earth station in these communities.

This agency's action should not focus only on the cost of service, but also on the quality of service. If a community is dissatisfied with the quality of service it is receiving, and is willing to bear the costs of installing a second earth station, I don't believe it is our job to tell that community it may not opt for better quality service.[1] In my view, this is an unwarranted exercise of our authority.[2]

My concern that these communities be able to improve the quality of the service they receive also leads me to conclude that under the joint ownership arrangement proposed in this decision, vesting control of the existing earth stations in Alascom is wrong. Alascom has little incentive to use these earth stations in a way that would maximize the quality of service to the local community. As the decision recognizes, it is the local exchange operator who has "the incentive to operate and develop the earth station facilities to tailor the services desired by Bush ratepayers." Para. 32. By giving Alascom the controlling ownership share, the item gives Alascom the ability to thwart local desires where they differ from its own best interests. I don't believe there is any need to do this.

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[1] *Cf. Communications Satellite Corporation*, where the Commission stated that it was willing to authorize facilities it believed to be redundant, so long as the customer (in that case DOD) was willing to pay the full cost of the facilities. 80 FCC 2d 170, 180 n. 28 (1980).

[2] The claim that permitting a second earth station might allow local carriers to "gold plate" their rate base is not a valid concern. In a situation where the decision to install a second earth station is not justified and appears to be an effort to inflate the carrier's rate base, it would be the job of the Alaska Public Utilities Commission to disallow the investment.

The majority's goal of having Alascom's technical expertise available to ensure efficient operation and continuity with the Alaska toll network is accomplished by having Alascom participate in the ownership of these facilities. I see no basis for the majority's implication that local carriers will in some way attempt to undermine efficient development of the Alaska toll network through their control over these facilities. Certainly it is in their interest to have a high quality system; this is likely to increase usage and, accordingly, revenues.

Quite simply, as I see it, the greatest incentive for improving the quality and diversity of service available in these communities lies with the local carriers, and not with Alascom. I would therefore vest the 51% share of these facilities in the local operators.

Intervention, Right to

Where petitioner was very late in seeking intervention 3½ years after designation for hearing—and did not show how it would assist in determination of the issues, its request was denied.
—*Golden State Broadcasting Corp.*
BC Docket No. 79–56

FCC 82R–73

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Applications of	
GOLDEN STATE BROADCASTING CORP. Tucson, Arizona	BC DOCKET NO. 79–56 File No. BPH–10,041
TUCSON COMMUNITY BROADCASTING, INC. Tucson, Arizona	BC DOCKET NO. 79–58 File No. BPH–10,345
TUCSON FM BROADCASTING CORPORATION Tucson, Arizona	BC DOCKET NO. 79–59 File No. BPH–10,347

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 1982; Released: December 10, 1982

BY THE REVIEW BOARD:

1. The Stop-The-Towers Coalition (Coalition), an organization representing environmental and citizens groups in Tucson, Arizona, which has not previously sought party status, filed on October 18, 1982 a combined motion to intervene, petition to deny, and appeal from the Initial Decision

(FCC 82D–67, released September 22, 1982) of Administrative Law Judge Coufal in this proceeding. The Broadcast Bureau filed an opposition on October 27, 1982, Tucson FM Broadcasting Corporation (Tucson FM) filed a motion to deny on October 29, 1982 and Coalition filed a response on November 18, 1982. For the reasons set forth below, we conclude that Coalition has not met the requirements of Section 1.223 governing intervention and its request must therefore be denied.

2. Coalition's pleading belatedly raises the alleged environmental impact of Tucson FM's proposed transmitter site and the Commission's refusal to designate an environmental issue against the applicant. Coalition submits that the proposed site has been firmly opposed by the local citizenry, newspapers, and county agencies, and that the Commission has ignored this sentiment as well as the requirements of the national Environmental Policy Act by declining to find adverse environmental impact. In addition, with respect to the issues that were designated, Coalition argues that Tucson FM should have been disqualified or assesses a substantial demerit under the harassment issue and that the ALJ also erroneously evaluated the comparative coverage and auxiliary power factors in selecting Tucson FM as the best qualified applicant.

3. Both the Bureau and Tucson FM oppose Coalition's participation in this proceeding. They point out that at the time it designated the case for hearing, the Commission considered the environmental impact of Tucson FM's application and decided to bifurcate the proceeding and defer action on the question pending the preparation of a final Environmental Impact Statement by the staff. Memorandum Opinion and Order, FCC 79–186, 71 FCC 2d 229, released April 3, 1979. Thereafter, by Order, FCC 79–737, released November 26, 1979, *recon. denied*, FCC 80–666, released November 25, 1980, the Commission adopted the staff's proposed final Impact Statement, concluding that Tucson FM's proposal would have no significant adverse environmental impact and that no issue should be added. Thus the Bureau and Tucson FM contend that the environmental question has been fully explored and resolved by the Commission. They further argue that Coalition has not met the test set forth by Section 1.223 of the Rules for intervention, and instead seeks to obtain a reversal of the Commission's refusal to designate an environmental issue in this phase of the proceeding. In response to Tucson FM, Coalition contends that the weight of the equitable circumstances it presents warrants intervention in this case.

4. Only parties may file exceptions, or appeal from Initial Decisions. Section 409(b) of the Communications Act of 1934, as amended; Section 1.276(a)(1) of the Commission's Rules; *Trustees of the University of Pennsylvania*, 69 FCC 2d 1394, 1430 n. 80 (1978). To achieve party status the Coalition must satisfy the requirements for intervention set forth in Section 1.223. This it has wholly failed to do. Section 1.223 (c) requires a

petitioner seeking to intervene more than 30 days after publication of the hearing issues in the Federal Register to set forth its interest in the proceeding, show how its participation will assist the Commission in the determination of the issues in question, and set forth reasons why it was not possible to file a timely petition to intervene. It also requires that the petition be accompanied by a supporting affidavit. First, the motion is very late, *see* 47 USC 309(d)(1), having been filed three and a half years after the Commission released its designation Order, three years after it adopted the staff's proposed Impact Statement, and two years after it denied reconsideration of its designation Order. The Coalition has made *no* effort to show why it was not possible to file in a timely fashion. *See Middle Georgia Broadcasting Co.*, 32 FCC 2d 974 (Rev. Bd. 1972). Second, although Coalition has set forth its primary interest in this proceeding to be the environmental impact of Tucson FM's proposal, it has not met the further Section 1.223 requirement of showing how its participation will assist the Commission in resolving the issues in the case, since, of course, no environmental issue is involved in this phase of the proceeding. To the extent Coalition also seeks to comment on specific issues that were tried, *e.g.*, comparative, we note that the exceptions of the competing applicants address these matters and thus there is no reason to allow intervention for this purpose alone. *See Brainerd Broadcasting Co.*, 2 RR 2d 293 (Rev. Bd. 1964). Finally, to the extent that the Coalition is merely requesting the Board to review the designation Order, we are bound by the Commission's prior actions. *See Atlantic Broadcasting Co.*, 5 FCC 2d 717 (1966).

5. ACCORDINGLY, IT IS ORDERED, That the appeal, motion to intervene, and petition to deny, filed October 18, 1982, by the Stop-the-Towers Coalition, IS DENIED, and the motion to deny filed October 29, 1982, by Tucson FM Broadcasting Corporation, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

FCC 82D–67

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Applications of	
GOLDEN STATE BROADCASTING CORP. Tucson, Arizona	BC DOCKET NO. 79–56 File No. BPH–10,041
TUCSON COMMUNITY BROADCASTING, INC. Tucson, Arizona	BC DOCKET NO. 79–58 File No. BPH–10,345
TUCSON FM BROADCASTING CORPORATION Tucson, Arizona	BC DOCKET NO. 79–59 File No. BPH–10,347

Appearances

Maurice Barnes and *Michael Foudy* on behalf of Golden State Broadcasting Corp.; *Carol Fielstra, James Gammon*, and *Mark Amerman* on behalf of Tucson Community Broadcasting, Inc.; *Richard Helmick* and *Stanley Neustadt* on behalf of Tucson FM Broadcasting Corporation; and *Brian Kilbane* on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION
OF
ADMINISTRATIVE LAW JUDGE FREDERIC J. COUFAL

Issued: September 15, 1982; Released: September 22, 1982

PRELIMINARY STATEMENT

1. By memorandum opinion and order, FCC 79–186, 44 Fed. Reg. 21077, released April 3, 1979, the Commission designated the above-captioned mutually exclusive applications (and the applications of Great Southwest Communications, Inc. and Old Pueblo Broadcasting Corporation—both later dismissed pursuant to settlement agreements[1]) for hearing[2] upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.
2. To determine, in the light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

The order permitted evidence to be adduced relative to the areas and populations to be served by each applicant to determine whether a comparative preference should accrue to any of them.[3]

2. In an order (FCC 79M–1302) released November 5, 1979, the following issues were added:

(a) To determine, for comparative purposes, whether Tucson FM Broadcasting Corporation complied with Section 1.65 of the Commission's Rules in failing to report to the Commission any inability of Sarah S. Grace to fulfill her financial commitment to that applicant prior to its amendment filed April 2, 1979.

(b) To determine, for comparative purposes, whether and to what extent the circumstances leading to the Commission's Memorandum Opinion and Order released February 9, 1979 *In the Matter of Liability of Golden State Broadcasting Corp., Licensee of Radio Station KHYT, Tucson, Arizona*, reflect on Golden State Broadcasting Corp. as a Commission licensee.

(c) To determine, for comparative purposes, whether Golden State Broadcasting Corp. complied with Section 1.65 of the Commission's Rules with respect to its reporting of its loss of a transmitter site on land owned by the Anamax Mining Company.

(d) To determine, for comparative purposes, with respect to Old Pueblo Broadcasting Corporation during those parts of

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[1] FCC 81M–835, released March 23, 1981 and FCC 81M–2421, released August 5, 1981.

[2] Golden State Broadcasting Corp. will be referred to henceforth as Golden State, Tucson Community Broadcasting, Inc. as TCB, Tucson FM Broadcasting Corporation as Tucson FM, Great Southwest Communications, Inc. as GSW, and Old Pueblo Broadcasting Corporation as Old Pueblo.

[3] The order (at footnote 3) also authorized the resolution of differences in the effective radiated power (ERP) specified by the applicants proposing transmitter sites in the Santa Catalina Mountains in order to conform to the requirements of the United States-Mexican Agreement. The Bureau proposed a resolution of the matter (Tr. 35) and the applicants with Santa Catalina sites changed their respective ERP's to conform to the Agreement. See the letter from TCB dated October 4, 1979 and the June 8, 1979 amendment by Golden State which specified a new transmitter site.

theyears 1975 through 1978 in which Peter M. Marcus was the controlling stockholder and president of the licensee of station WWCO, whether that station complied with its obligation to document its ascertainment efforts.

(e) To determine with respect to Tucson Community Broadcasting, Inc., the source and availability of the funds that Tucson Community Broadcasting, Inc. will need to construct its proposed station and to operate it for three months; the changes, if any, in the estimate of operating costs occasioned by the possible loss of the services of Mary Ellen Rockler; and whether, in light of the evidence adduced under this issue, Tucson Community Broadcasting, Inc. is financially qualified.

(f) (i) To determine the location of the proposed 3.16 mV/m and 1.0 mV/m contours of the applicants in this proceeding.

(f) (ii) To determine, on a comparative basis, the areas and populations of the respective 3.16 mV/m and 1.0 mV/m contours which may be reasonably expected to receive actual service from the applicants' proposed operations.

(f) (iii) In the event that proof under issues (f)(i) and (f)(ii) establishes that an applicant will bring actual service to areas and populations not served by its competitors, to determine the number of services, if any, presently available to such areas and populations.

In an order (FCC 80M–632) released April 16, 1980, summary decision was granted in favor of TCB on the financial issue specified against it.

3. By order (FCC 80M–2146) released October 28, 1980, the following issue was added:

To determine whether Peter Marcus violated Section 1.65 of the Commission's Rules by failing to report within 30 days understandings and agreements that he had reached with Alva B. Torres and Barbara Z. Marcus whereby they were to acquire interest in his application and to participate in the proposed station operations and if it is found that Peter Marcus did violate Section 1.65 to determine the effect of such violation on Old Pueblo Broadcasting Corporation's comparative qualifications.

4. An order (FCC 80M–2147) released October 28, 1980, added the following issues:

To determine whether Great Southwest Communications, Inc. conducted an improper investigation of Mary Ellen Rockler and thereby harassed her and Tucson Community Broadcasting Corporation.

To determine whether, in light of the evidence adduced under the foregoing issue, Great Southwest Communications, Inc. possesses the requisite basic and comparative qualifications to serve as a Commission licensee.

Those issues were amended in an order (FCC 81M–1798) released June 11, 1981 to be as follows:

> To determine whether Great Southwest Communications, Inc., Tucson FM Broadcasting Corporation, and/or Old Pueblo Broadcasting Corporation conducted an improper investigation of Mary Ellen Rockler and thereby harassed her and Tucson Community Broadcasting Corporation.
>
> To determine whether, in light of the evidence adduced under the foregoing issue, whether Tucson FM Broadcasting Corporation and/or Old Pueblo Broadcasting Corporation possess the requisite basic and comparative qualifications to serve as a Commission licensee.

5. Hearing sessions were held on April 24, April 30, May 1, 5–8, 12–14, September 15, 22–23, and October 28, 1980; and June 17–19 and July 6, 1981. Tucson FM, the party with the burden of proceeding and of proof, elected to present no evidence relating to issues (f)(i), (f)(ii), and (f)(iii) (Tr. 2183). The hearing record was closed by order released September 14, 1982 (FCC 82M–2808).

Findings of Fact

Harassment Issue

6. Thomas S. Rockler, an officer, director, and stockholder of TCB, testified on May 1, 1980 (TCB Ex. 1; Tr. 486 *et seq.*). Mr. Rockler said that he had acquired his wife's 48% interest in TCB because she had been mentally ill for a long time, had been under psychiatric care for a number of years, was then in a hospital, had made attempts at suicide, and was not then capable of holding a responsible position (Tr. 501–502).[4] Mr. Tillotson, counsel for GSW, heard Mr. Rockler and concluded that since it was to TCB's benefit respecting integration credit that Mrs. Rockler's disassociation from TCB be shown to be involuntary, the condition of Mrs. Rockler bore investigation (Tr. 2498).[5] Tillotson talked to GSW's Tucson counsel, Mr. Caldwell, about the interview. Caldwell recommended that his legal assistant, Ms. Mezzatesta, conduct the interview because she was a woman, a non-lawyer, and a competent interviewer (Tr. 2476–2477). Tillotson told Caldwell about the statements Rockler had made about his wife's health and instructed Caldwell to approach the matter with sensitivity and to drop the interview if Mrs. Rockler seemed unable to emotionally deal with the questioning (Tr. 2480). Before Caldwell was asked to proceed, Tillotson discussed the plan with counsel for

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[4] TCB counsel had previously advised that Mrs. Rockler was, on April 24, 1980, in a mental institution (Tr. 247).

[5] Tillotson knew that Mr. Rockler purchased Mrs. Rockler's stock after designation (TCB Ex. 1) and that TCB claimed that integration credit should be given Mr. Rockler for that ownership because the transfer was involuntary (Tr. 486–499).

Old Pueblo and for Tucson FM; the former helped plan the interview and the latter thought the approach "interesting" and asked to be advised of the result (Tr. 2474–2475; TCB Ex. 4). Neither Mrs. Rockler nor Mezzatesta testified and there is no competent direct evidence of a telephone call involving those two persons.[6] However the fact that there was a call from Mezzatesta to Mrs. Rockler on August 12, 1980, pursuant to Tillotson's direction, is undisputed (Tr. 2477).

7. At about 7 p.m. on the evening of the day of the call, Mr. Rockler saw Mrs. Rockler and found her to be troubled and emotionally unstable. This was a change in her condition. The recent weeks had been a time of improvement during which she had not shown signs of being troubled or of emotional instability. He left Mrs. Rockler and at about 9 p.m. she called him and asked him to come to her home. He did so and found her to be pale, distraught, agitated, and nervous. She had the appearance of being drugged and he discovered she had taken an overdose of sleeping and antidepressant medications and had drunk a bottle of wine and some beer. She had a bloody cut on her wrist and Mr. Rockler found some bloody glass which he believed had been used by her to cut her wrist. He took her to a hospital and told attending nurses what he thought she had taken and they induced vomiting (TCB Ex. 5). The wrist wound required no stitiches (Tr. 2820). She was discharged the next day (Tr. 2712–2713). Mrs. Rockler had refused to give an affidavit relative to the events of August 12, 1980 or to permit her doctor to testify. She is sensitive to inquiries about her condition (TCB Ex. 4).

Diversity

8. Golden State owns 100% of standard broadcast station KHYT, which is licensed to South Tucson, Arizona (Tr. 299). South Tucson is about 1 square mile in size, has a population of 7,000 to 8,000 people, and is completely encompassed by the city of Tucson, Arizona (Tr. 308). Neither TCB nor any of its principals has an interest in any mass communications medium (TCB Ex. 1). Tucson FM owns no interest in any medium of mass communications. Charles Simms, who owned 4% of Tucson FM's stock at the time this matter was designated, and who now owns 2% thereof (order, FCC 81M–2422),[7] owns Patronus Productions, a company which produces "Looking Black," a program series relating to the black community which is broadcast on 21 Arizona radio and several television stations. No other principal of Tucson FM owns any interest in any medium of mass communications (Tucson FM Ex. 19).

integration

9. Golden State, at the time of designation, was organized as follows:

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[6] GSW did file a pleading to which was attached Mezzatesta's account of the call (TCB Ex. 4).

[7] Approving petition for leave to amend filed July 6, 1981.

Stockholder	*Residence*	*Percentage of Shares*	*Director*	*Office*
Robert H. Scholz	Tucson	93.05	yes	President
Willie R. Adams*	Tucson	1.38	yes	Vice President
Johnny Bowens*	Tucson	1.38	yes	—
Richard N. Russell	Tucson	1.38	no	—
Walter T. Hopkins	Tucson	1.38	no	—
John T. Anderson	Tucson	1.38	no	—
Elka Cox	Tucson	—	yes	Secretary/ Treasurer
Laurie Fagin	Tucson	—	yes	Vice President
William A. Youdelman	Los Angeles	—	yes	Vice President
Robert W. Morgan	Los Angeles	—	yes	Vice President
J. R. Scholz	Anaheim	—	yes	Vice President
Geneva Scholz	Anaheim	—	yes	Vice President
Michael L. Foudy	Tucson	—	yes	Vice President
John W. Emerson	Tucson	—	yes	Vice President

* spouse is co-owner of stock

Golden State stock is 7% minority owned; 27% of the directors are female and 27% are members of a minority group; 29% of the officers are women and 27% are members of a minority group (Golden State Ex. 1).

10. Robert H. Scholz was the only stockholder proposed to be integrated into management. He was to be in charge of the day-to-day operation of the station. Scholz lived in Tucson from 1966 until his death on July 19, 1981.[8] He operated and was majority stockholder in station KHYT-AM in South Tucson during that period. Scholz was a member of the Southside Optimist Club, a director of Tucson Desert Museum, and a member and officer of Tucson Broadcaster's Association. In 1976 Scholz assisted in the establishment of the Pima County Victim-Witness Advocate Program to provide assistance to victims of crime. He developed programming for that endeavor and solicited other broadcasters to help in the effort. Prior to coming to Tucson, Scholz worked in several radio stations in various capacities (Golden State Ex. 4).

11. When the designation order issued, Thomas S. Rockler was president, director, and 52% owner of the stock of TCB. His wife, Mary Ellen Rockler, was then owner of 48% of the stock. Mr. Rockler proposes to be full-time general manager, news director, and public affairs director of the station. He has lived in Tucson since 1972 and is a member of the Chamber of Commerce. Mr. Rockler broadcast news and had a music program on the University of Kansas station while he was a student of radio and television in 1964, 1970, and 1971 (TCB Ex. 1).

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[8] This occurred after the hearing ended and there is no direct evidence of it. However the fact is undisputed (Golden State Reply Findings, p. 2; Tucson FM Reply Findings, p. 7; TCB Findings, p. 14, fn. 10).

12. TCB offered no evidence as to what duties, if any, it was contemplated that Mrs. Rockler might have at the station.[9] Thomas Rockler acquired Mrs. Rockler's stock on April 25, 1980 because Mr. Rockler felt that his wife's physical and mental condition would not permit her to function at the station. Mr. and Mrs. Rockler had entered into a legal separation agreement on November 29, 1979 (TCB Ex. 1; Tr. 621–622).

13. At the time of the designation order, John W. Teal was 52% owner, president, and director of Tucson FM, and Charles G. Simms was a 4% owner, secretary/treasurer, and director of the corporation (Tr. 1077, 1350–1351). An order (FCC 81M–2421), released August 5, 1981, approved a settlement agreement between Tucson FM and Old Pueblo (and dismissed the Old Pueblo application), whereby Old Pueblo shareholders would acquire ownership rights to 50% of Tucson FM stock; a second order (FCC 81M–2422) of the same date accepted an amendment which reduced the ownership interests of Teal to 48% and of Simms from 4% to 2%.

14. Teal proposes to work 40 hours per week as general manager and to be responsible for the overall operation and management of the FM station. He has resided in Tucson since 1975 (Tucson FM Ex. 17, p. 5). He has no broadcast experience but has participated in production work for live audio recordings and studio productions for radio commercials and has done private consulting in audio engineering and audio production (Tucson FM Ex. 17, pp. 1–2; Tr. 1194–1196, 1199–1201, 1240).

15. Simms, a Black, proposes to work 40 hours per week as the public affairs director of the proposed station. Since 1976 Simms, under the name of Patronus Productions, has produced in Tucson the program series entitled "Looking Black" (Tucson FM Ex. 19, p. 2; Tr. 1394–1398). He has been a resident of Tucson since 1979 and is not an active member of any local organization. In connection with the production of "Looking Black" he has promoted and become familiar with the activities of many local Tucson civic, cultural, minority, and public welfare groups (Tucson FM Ex. 19, pp. 3–4; Tr. 1383). From 1971 to 1979 Simms had experience as an announcer and audio director for radio and television broadcast stations (Tucson FM Ex. 19, pp. 1–2).

Comparative Coverage

16. Golden State and TCB have specified essentially the same transmitter site on Mt. Bigelow. Tucson FM proposes to operate from another site (Joint Ex. 2, pp. 3–4). Tucson has ten existing full-time aural transmission facilities and one existing daytime aural transmission facility (Joint Ex. 2, pp. 5, 10–11). Since the two Mt. Bigelow applicants have essentially the

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[9] The application indicates she was to be secretary, receptionist, and traffic clerk (amendment filed June 29, 1979, Ex. III-A, p. 2).

same facilities, their coverage, tabulated below as Mt. Bigelow, is deemed identical. Tucson FM's coverage will differ as shown below (Joint Ex. 2, pp. 2–3, 7–10):

Primary Service

Applicant	*Area (Square Miles)*	*Population*
Tucson FM	10,224	557,255
Mt. Bigelow	8,614	542,606

17. During the day there are five or more services available to almost the entire area proposed to be served by both Tucson FM and the Mt. Bigelow applicants. The exception is the town of Willcox (population 2,568), which receives only one FM and two AM services. The Mt. Bigelow applicants will provide a fourth daytime service to Willcox. Tucson FM will not (Joint Ex. 2, p. 6; Tr. 2200).

18. At night areas and populations to be served and existing services are as follows (Joint Ex. 2, pp. 7–9):

	Tucson FM		*Mt. Bigelow*	
Services	*Area (Square Miles)*	*Population*	*Area (Square Miles)*	*Population*
0	4,801	23,488	2,769	17,924
1	2,485	31,883	3,194	34,483
2	1,118	7,641	1,612	8,635
3	191	3,002	183	2,876

Sarah Grace—Tucson FM Reporting Issue

19. On March 20, 1978 Sarah Grace (sometimes Sarah Grace Langs) agreed to lend $342,058 to Tucson FM for construction and operation of the proposed station. The funds were to come to her as a loan from her broker secured by stocks in his possession owned by her (Old Pueblo Ex. 8). By late 1978, Grace had suffered some personal problems and financial reverses which caused her to decide to withdraw as financial backer; she wrote to John Teal asking that someone else be found to take her place (Tr. 2240–2241). In a December 12, 1978 letter from her attorney to the local

attorney for Tucson FM the latter was advised, *inter alia*, that Grace then felt it in her interest to withdraw her financial support. The letter went on to say that the writer would advise Tucson FM's Washington counsel of the Grace decision and request that he advise FCC (Old Pueblo Ex. 9). The response by Tucson FM's local counsel was to the effect that Grace had no legal right to withdraw her loan commitment (Old Pueblo Ex. 10).

20. Grace testified that she had not read the December 12, 1978 letter before it was sent though she had discussed the matter with her counsel and the letter seemed "terribly tough." She did not intend to withdraw her support until a substitute had been found and that she would feel morally and legally obliged to advance the amount she had committed if a license had been granted to Tucson FM (Tr. 2258–2260). She had securities on deposit with her broker which would have enabled her to do so (Tucson FM Ex. 21; Tr. 2279–2280).

21. Tucson FM principals found a substitute for Grace on March 28, 1979 (Tr. 1221–1222). An amendment so showing was filed April 2, 1979 (order, FCC 79M–1051).

Old Pueblo Reporting Issue

22. The Old Pueblo application was, as originally filed, the application of Peter Marcus. On March 12, 1979 the application was amended to show that Old Pueblo had replaced Peter Marcus as applicant and that Peter Marcus, Barbara Marcus, and Alva Torres were the stockholders, directors, and officers of the new applicant (TCB Ex. 2).

23. Barbara Marcus, wife of Peter Marcus, had wanted an active role in the station since the application was filed in 1976 and had discussed it with him (Tr. 1417–1418). Mrs. Marcus helped with ascertainment surveys at times earlier than January 1979 and helped plan community leader surveys which began on January 11, 1979 (Tr. 1437). She conducted community leader surveys and believed she had to be a stockholder in order to do that (Tr. 1437, 1441–1443).

24. Alva Torres first met Peter Marcus when he was conducting ascertainment surveys in Tucson in January 1979 (Tr. 1648). A couple of days later Marcus spoke to her about joining the applicant (Tr. 1652). By January 31, 1979 Torres and Mr. Marcus had agreed that Torres would be an officer, director, and shareholder of the corporation (Tr. 1656). Torres' best recollection was that the agreement came in early January 1979 (Tr. 1659).

WWCO Ascertainment Documentation Issue

25. The parties stipulated that during 1976–1978 there were 28 interview reports which were completed and placed in the public file of WWCO

which (a) were not signed by the interviewer, (b) did not have any indication as to the position of the interviewer, and (c) did not have any indication intelligible to the public that the report was reviewed by anyone in station management. It was also stipulated that there were 22 other reports completed during the same period that (a) were neither signed by the interviewer nor dated, (b) contained no indication of the position of the interviewer, and (c) contained no indication intelligible to the public that the report was reviewed by anyone in station management. During the same period, there were 30 further interview reports in the WWCO public file which were signed but not dated and did not contain any indication as to the interviewer's position or any indication that the report was reviewed by management (Tr. 1888). All of the interviews mentioned were taken after the effective date of *Primer on Ascertainment of Renewal Applicants*, released January 7, 1976 (Tr. 1889–1890).

KHYT Forfeiture Issue

26. On February 9, 1979, the Chief of the Broadcast Bureau assessed a $1,000 for forfeiture against station KHYT. The fine concerned the station's failure to identify the person paying for certain broadcast announcements carried in November 1977 (Old Pueblo Ex. 17). At the time of the alleged violations, Robert H. Scholz, president of Golden State, controlled station KHYT (Tr. 431). Although Golden State paid the forfeiture, Shcolz said he felt there had been no violation of the rules (Tr. 462). Golden State offered no further evidence on this issue.

Golden State Site Loss Reporting Issue

27. Golden State originally proposed as its transmitter site property owned by Anamax Mining Company (Anamax) (Tr. 343–344). Golden State's reliance upon use of the site was based upon a letter dated October 15, 1976 from Dale F. Kittel, director of land management, Anamax, to William A. Youdelman, a vice president of Golden State (Tucson FM Ex. 23). Kittel's letter said that "we believe that a resonable arrangement can be made respecting fees charged as rentals, permission for access and other related matters."

28. By letter dated January 31, 1979, D. R. Russell of Anamax wrote Youdelman that Anamax had no sites available for either lease or purchase (Tucson FM Ex. 24). This letter came to Golden State and was forwarded unopened to Youdelman, who was no longer with Golden State, at his last known address in California. The letter was subsequently returned to Golden State as undelivered and was opened and

shown to scholz sometime in mid-March 1979 (Tr. 379–380, 403, 369, 384–385, 390–391).

29. Golden State attempted to negotiate with Anamax during March–April 1979 to effectuate a retraction of the January 31, 1979 letter (Old Pueblo Ex. 21, p. 4; Tr. 395–402). Golden State's counsel informed Scholz on May 1, 1979 that the negotiations with Anamax had been fruitless (Old Pueblo Ex. 21, p. 4). By letter dated May 7, 1979, Golden State notified the Commission and the parties that it had lost its proposed transmitter site (Old Pueblo Ex. 21, p. 5).

Emergency Power

30. Only TCB proposes an emergency power service at its transmitter site (Tr. 497).

Conclusions of Law

Harassment

31. With resolution of the financial issue designated against TCB in that applicant's favor, the only qualifying matter to be resolved is the harassment issue against GSW, Tucson FM, and Old Pueblo. At the outset, it is noted that Mr. Tillotson, counsel for then applicant GSW, discussed with counsel for then applicant Old Pueblo, Tillotson's inclination to ask questions of Mrs. Rockler respecting her relationship with and withdrawal from TCB and that counsel for Old Pueblo made suggestions as to how this should be accomplished. It is inferred that Old Pueblo was interested in and intended to share in any favorable outcome. Tillotson also advised counsel for Tucson FM of his intention. Counsel expressed an interest in hearing the outcome. It is inferred that Tucson FM also intended to share in a favorable result. These circumstances, and the fact that Old Pueblo's stockholders later gained a 50% interest in Tucson FM, require that there be imputed to Tucson FM a share of the responsibility for the interview.

32. At the time the call to Mrs. Rockler was made, Mr. Rockler had testified that he had acquired his wife's interest in TCB. It was apparent that since Mr. Rockler had increased his ownership in TCB from 52% to 100%, the circumstances surrounding Mrs. Rockler's withdrawal from the corporation might be important to the integration credit to be given TCB from Mr. Rockler's participation. Indeed, TCB had expressly claimed that the withdrawal was involuntary and that therefore Mr. Rockler should be credited with 100% integration for comparative purposes. In addition, TCB had provided no testimony by Mrs. Rockler nor any medical evidence with respect to her condition. TCB's competitors were left with Mr. Rockler's unsupported lay testimony as to her condition. In those circumstances it was reasonable for any party to attempt to learn facts with

respect to Mrs. Rockler's withdrawal. This was difficult because Mr. Rockler had said that Mrs. Rockler was mentally ill and had been suicidal. Because of this claim, Tillotson endeavored to arrange that the interview would be circumspectly handled and the interviewer was instructed to terminate the inquiry on any signs of distress. There is no evidence that the interviewer acted with insensitivity toward Mrs. Rockler or that Mrs. Rockler indicated any upset to the interviewer. The evidence respecting the interview and the succeeding matters concerning Mrs. Rockler is skimpy. While recognizing that TCB's position respecting proof may have been difficult, it, nonetheless, had the burden. The conduct of GSW in interviewing Mrs. Rockler was not shown to be such that any party which shares in the responsibility therefore should be disqualified.

Diversity

33. Under *Morris, Pierce & Pierce*, 88 FCC 2d 713, 50 RR 2d 959, a production company is not considered a medium of mass communications for the purpose of comparative evaluation.[10] Thus Tucson FM suffers no demerit for Simms' ownership of such a company. Neither TCB nor any principal thereof has an ownership interest in any medium of mass communications. Golden State owns an AM station in South Tucson, a city completely surrounded by the proposed city of license. Thus Tucson FM and TCB each have a substantial comparative preference over Golden State with respect to the diversification criterion.

Integration

34. At the time of the hearing, Robert H. Scholz the then 93.05% owner of Golden State, was proposed to be in charge of the day-to-day operation of the station. Scholz was a long-time resident of Tucson and a local broadcaster with many years' experience. There was no other person proposed for integration. It is Golden State's view that nothwithstanding Scholz' death, it is entitled to integration credit for his proposed participation because the transfer of his stock from him was involuntary. Golden State relies on *Mid-Florida Television Corp.*, 76 FCC 2d 158, 46 RR 2d 1503, and other cases which are to the effect that an involuntary transfer of ownership after designation permits the applicant involved to maintain but not to improve its integration proposal.

35. But those cases involve situations where the applicant's integration proposal was improved by reason of the involuntary transfer and not where the proposal was diminished or lost. No cases involving the latter situation have been cited. The whole matter of integration credit has to do

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[10] Absent specific proof not developed here.

with selection of the applicant which will best function in the public interest.[11] There is no benefit to the public in awarding a license to an applicant with a proposal rendered impossible by the death of a principal. Golden State, since the death of Scholz, has no integration proposal.

36. TCB, in its application, proposed that Thomas Rockler, its 52% stockholder, would be full-time general manager, news director, and public affairs director. After designation, but prior to hearing, Mr. Rockler acquired the 48% of TCB owned by his wife. The voluntariness of the transfer is argued by the parties as is the question of whether Mrs. Rockler's participation was ever significant enough to be worthy of integration credit. TCB offered no evidence as to any proposed participation in station affairs by Mrs. Rockler. Thus at designation there was a 52% integration proposal and any transfer of Mrs. Rockler's stock to her husband, whether voluntary or involuntary, could not improve TCB's integration proposal. See *Mid-Florida Television Corp., supra*, and cases there cited.

37. Mr. Rockler has been a Tucson resident since 1972 and is a member of the Chamber of Commerce of that city. He broadcast news and had a music program on the University of Kansas station while a student before 1972.

38. At designation time, John W. Teal owned 52% of the stock of Tucson FM and Charles G. Simms owned 4%. The balance was owned by Sarah Grace who, after designation, sold her stock to Teal. Thereafter the settlement agreement between Tucson FM and Old Pueblo diminished Teal's stock ownership to 48% and Simms' to 2%. Teal proposes to work 40 hours per week as a general manager of the station and Simms proposes full-time work as the public affairs director. Credit for Teal is enhanced by local residence, some audio production work, and by his experience as an audio engineer. Simms' credit is enhanced because he is a member of a minority group, has experience in the production of radio shows, resides in Tucson, and has several years' experience as an announcer and audio director for broadcast stations.

Comparative Coverage

39. Tucson FM enjoys a significant advantage because it would bring a first nighttime service to 5,564 more people and to an area of 2,092 more square miles than will either TCB or Golden State. The advantage is clearly Tucson FM's even though TCB and Golden State would serve the

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[11] The rule against comparative improvement after designation considers another public interest aspect of the comparative process, that of the elimination of a scramble to improve position until the day the decision is final.

town of Willcox (population 2,568) with a forth daytime service and Tucson FM would not reach that community. See *RAM Enterprises, et al.*, 57 FCC 2d 844, 35 RR 2d 1507.

Miscellaneous Matters

40. TCB enjoys a minor comparative credit because it is the only applicant which proposes an emergency power generator.

41. Chargeable to Tucson FM are any comparative demerits by reason of any failure to report respecting Sarah Grace, and failure by Peter Marcus to report Old Pueblo's employment arrangements with Barbara Marcus and Alva Torres, any deficiencies in the ascertainment efforts of WWCO, and any demerits resulting from any harassment of Mrs. Rockler.

42. While it is clear that Grace formed the intent to withdraw her financial support from Tucson FM in the fall of 1977 and shortly thereafter so advised the other principals, she did not execute her intention until the latter part of March of 1978. She maintained the capacity to fulfill her commitment until then. The early April 1979 report of her withdrawal was well within the time constraints imposed by Section 1.65.

43. The evidence relating to the employment agreements reached by Peter Marcus with Alva Torres and with Barbara Marcus indicates that by early January 1979, it had been settled that Alva Torres would be a part of the Old Pueblo operation and that by mid-January agreement had been reached with Barbara Marcus. Their employment was not reported until mid-March of the same year. It is not shown that there was any intent to gain advantage by tardily reporting or that any could have been gained. Accordingly, the short delay is *de minimis* and no comparative demerit is assessed.

44. What has been previously said about the harassment matter is pertinent here. TCB, having the burden, has not shown conduct of such a nature as to provide support for a comparative demerit.

45. The records of WWCO clearly indicate wholesale deficiencies in at least recording ascertainment efforts. A minor comparative demerit is assessed against Tucson FM.

46. Golden State is chargeable for any demerit that may be appropriate by reason of the forfeiture paid by KHYT for violation of rule 73.1212 and for the alleged failure to timely report the loss of its FM transmitter site.

47. Golden State offered no evidence relative to the KHYT matter beyond a statement by Scholz that he did not believe there had been a violation of the rules. It does not appear that the same violation occurred

over a long period of time or was one of a series of other violations. No demerit will be assessed.

48. The failure to report the loss of the transmitter site involves a delay of a week or two beyond the 30 days prescribed in Section 1.65 after Golden State's counsel advised it of the finality of the Anamax position. The delay is not shown to have disadvantaged anyone or to have been designed to do so. The matter is *de minimis* and no demerit will be assessed.

Ultimate Conclusions

49. Golden State's diversity position and the unfortunate failure of its integration proposal place it clearly in last place in the comparative evaluation.

50. As between TCB and Tucson FM, the diversity criterion leaves no comparative difference because neither has an interest in any medium of mass communications. While the percentages of full-time integration of TCB and Tucson FM are close, 52% and 50%, respectively, and while there is authority that differences of an even greater amount are essential equality (52.63% and 60% in *The News-Sun Broadcasting Co.*, 24 FCC 2d 770, 777, 19 RR 2d 942), the particular percentages here mean the difference between positive and negative control. A small credit is therefore due TCB respecting quantitative integration. This credit is not, however, the clear quantitative difference referred to in *WHW Enterprises, Inc.*, 89 FCC 2d 799, 51 RR 2d 409, which may not be overcome by qualitative differences. Both applicants' integrated principals have Tucson residences and none have significant community involvement. But Tucson FM has a qualitative preference for the involvement of its 2% stockholder Simms, a Black, who is proposed to be full-time public affairs director, and for the greater broadcast experience of Simms than that of Rockler. There being only a small quantitative difference between Tucson FM and TCB, the qualitative difference gives Tucson FM a small integration preference.

51. The decisive factor is the Tucson FM preference for its superior coverage. It reaches an appreciably larger nightime "white area" than does TCB. This comparative preference is easily sufficient to overcome Tucson FM's minor demerit for the WWCO ascertainment deficiencies and the small preference due TCB for its emergency generator.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken to the Commission by a party or the Commission reviews this Initial Decision on its own motion in accordance with Section 1.276 of the rules, the application of Tucson FM Broadcasting Corporation

for a construction permit for an FM station in Tucson, Arizona IS GRANTED; the application of Golden State Broadcasting Corp. IS DENIED; and the application of Tucson Community Broadcasting, Inc. IS DENIED.[12]

Federal Communications Commission

Frederic J. Coufal *Administrative Law Judge*

[12] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d).

Reconsideration, Petition for, Denial of

Reconsideration denied where Board gave some slight salutory merit for participation of limited partners and credited part-time integration of principal without requiring actual physical presence at the station.

—Greater Wichita Telecasting, Inc.

BC Docket No. 81–103FCC 82R–75

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Applications of	
GREATER WICHITA TELECASTING, INC. Wichita, Kansas	BC DOCKET NO. 81–103 File No. BPCT–800806KG
COLUMBIA-KANSAS TV, LTD. Limited Partnership Wichita, Kansas	BC DOCKET NO. 81–104 File No. BPCT–800314KE
For Construction Permit	

MEMORANDUM OPINION AND ORDER

Adopted: December 7, 1982; Released: December 14, 1982

BY THE REVIEW BOARD:

1. In a Decision released July 30, 1982 (FCC 82R–45, 90 FCC 2d 1046), the Review Board granted the application of Columbia-Kansas TV, Ltd. (Columbia) and denied the competing application of Greater Wichita Telecasting, Inc. (Greater Wichita) because Columbia enjoyed a dispositive advantage under the integration criterion of the standard comparative issue. Now before the Board is a petition for reconsideration, filed

August 30, 1982, by Greater Wichita, an opposition, filed September 14, 1982, by Columbia; and a reply, filed October 7, 1982, by Greater Wichita.[1]

2. Greater Wichita seeks reconsideration on three major grounds: (1) no credit can be given to Columbia for the participation of limited partners in station management; (2) no credit can be given for the part-time integration of Lee Hanna; and (3) if Lee Hanna is given integration credit, Greater Wichita should have the opportunity to claim integration credit for its principals.

3. Greater Wichita contends that the Board erred in taking any cognizance of the equity presence of two Columbia principals, Ms. Jo S. Zakas and Mr. Antonio F. Casado. Although Ms. Zakas and Mr. Casado, both civically active local residents, are slated to be the station's Assistant General Manager and Director of Community Relations, respectively, Greater Wichita asserts that these two equity-holding managers must be completely ignored because they are limited partners. It argues that *Anax Broadcasting, Inc.*, 87 FCC 2d 483 (1981), precludes any consideration whatsoever of the roles or positions of limited partners and that the Board's passing cognition of their association with the station "is contrary to the express command of the Commission"[2] and creates a "new type of credit, something only the Commission itself has the power to do."[3]

4. We believe that these objections miss the mark for several reasons. First, while we continue to adhere to the view that *Anax* may be factually and procedurally distinguishable from the instant case, we treated it as dispositive in the challenged decision[4] and specifically denied, several times (90 FCC 2d at 1052, 1053), the customary integration credit which Columbia would have received had Ms. Zakas and Mr. Casado not been limited partners. The Board has consistently equated the basic integration credit to voting control.[5] Since no basic or enhanced integration credit was granted here for the presence of Zakas or Casado, we violated no "contrary command of the Commission" in *Anax*.

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[1] Also before the Board is a contingent motion to reopen the record and remand for further hearing, filed August 30, 1982, by Greater Wichita, and an opposition, filed September 14, 1982, by Columbia. This motion will be denied. *See* para. 10, *infra*.

[2] Greater Wichita Petition, at 8.

[3] *Id.*, at 4.

[4] *Anax* dealt with the question of whether an application could be amended after designation to eliminate the presence of (potential) 71% limited partners when the general partner found new financing or whether such an amendment was to be considered a significant change in ownership requiring the filing of a new applicaiton. In the circumstances of *Anax*, the Commission likened the amendment to a curative to a defective financial showing which an applicant may amend any time as a matter of right. It permitted the amendment "to preserve a comparative choice." 87 FCC 2d at 487. There is, in the instant case, no amendment or, indeed, any other factual similarity to *Anax*.

[5] *See, e.g., Merrimack Valley Broadcasting, Inc.*, FCC 82R–71, released December 8, 1982, at paras. 5–7; *Central Texas Broadcasting Co., Ltd.*, 90 FCC 2d 583 (Rev. Bd. 1982); *New Continental Broadcasting Co.*, 89 FCC 2d 631 (Rev. Bd. 1982).

5. Second, the Board created no "new credit" when it heeded the *Policy Statement's* observation "that station ownership by those who are local residents . . . may still be of *some value* even where there is not the substantial participation to which we will accord weight under *this* [integration] heading."[6] Apart from the fact that the law requires that the Commission "must take into account all the characteristics which indicate differences [in competing applicants] and reach an overall relative determination upon an evaluation of all factors," *Johnston Broadcasting Co.* v. *FCC*, 175 F.2d 351, 357 (D.C. Cir. 1949), nothing in the *Policy Statement* or *Anax* instructs the Board to categorically ignore the managerial presence of local equity owners (one minority and one female) in meaningful positions at the proposed station. While Columbia received no integration credit for the participation of the two limited partners because of their lack of voting control (90 FCC 2d at 1052, 1053) and, hence, no customary enhancement for the local residence which inheres thereunder, it is a "relative" difference between the two applicants, *Johnston, supra*, and one recognized by the Commission as having "some value" even if not directly or significantly creditable under the seminal integration heading. We noted that their equity presence in management positions directly related to the public pulse would further the likelihood of the station's sensitivity to local needs. Again, the "slight salutory merit" (90 FCC 2d at 1053) given this factor is, in any absolute sense, exceedingly small. It is only fractionally the strength of a basic integration credit. But, in the face of *Johnston* and the *Policy Statement* we cannot simply order this difference, however slight, to simply disappear. Where one applicant has local equity owners (particularly minority and female) in solid managerial positions which will help "foster sensitivity to the local community," *Anax, supra*, 87 FCC 2d at 488, and the other applicant does not, this fact is certainly helpful in reaching the "overall relative determination" of which *Johnston* speaks and which the *Policy Statement* implements.[7]

6. Greater Wichita also disputes the "slight" credit (90 FCC 2d at 1051) given to Hanna's proposal to devote 20 hours per week to station management duties although Hanna frankly stipulates that he will not be in Wichita every day and will maintain his principal corporate office in New York City. The burdern of Greater Wichita's argument is that the *Policy Statement* permits integration only "where the station [is] owned by local residents or those who [are] in the community on a regular basis and [are] aware of the problems and concerns of the local population."[8] Since

[6] 1 FCC 2d 393, 396 (1965) (emphasis added).

[7] *See Webster-Baker Broadcasting Co.*, 88 FCC 2d 944, 953, 956 (Rev. Bd. 1982) (some enhancement given for minority participation even where less than necessary for integration credit).

[8] Greater Wichita Petition, at 5.

Hanna, a 5% owner, who is the Executive Vice President and Chief Operating Officer of the general partner, has pledged to be in Wichita "on a regular basis," albeit not every day,[9] Greater Wichita's objection is narrowed to the fact that Hanna will not be a "local owner." In the recently decided case of *Merrimack Valley Broadcasting, Inc.*, FCC 82R–71, released December 8, 1982, the Board devoted considerable attention to the Commission's integration criterion and the relationship of local residence thereto.[10] In that case we determined that the credit to be given for "participation in station operation by owners"[11] was a "per se" credit while local residence—past or proposed—is expressly intended as a separate enhancing factor. We observed from the *Policy Statement* that the predicate underlying a *per se* integration credit (*i.e.*, an owner's presumed authority to effectuate changes in policies and practices to respond to changing needs) is slightly different from that underlying the enhancement derived from the attributes of local residence (*i.e*, a likelihood of continuing knowledge of changing local interests and needs). Although participating ownership, on the one hand, and local ownership, on the other, are surely complementary (and the combination of the two entitles an applicant to an *enhanced* integration credit), these two qualities are discretely addressed by the *Policy Statement* and quite separately credited.[12]

7. We do acknowledge, however, that the grant of credit for Hanna's pledge of part-time participation (20 hours per week) required both close scrutiny and extensive consideration (from the standpoint of this case and precedent alike) in view of his stipulation that his principal office will be in New York City. We also considered his other interests. After carefully examining Hanna's professional history (nearly 25 years in the management of stations owned by others), his other demands, and his candor in seeking an integration credit he knew to be merely "slight," we determined in this case to accept his pledge of active participation in the first station where he had an ownership interest on a basis which averages only to about 3 hours per day. There is no direct dispute with Hanna's testimony that "[he] will be the person responsible, directly responsible, for the major activities of the station, its policy and programming"[13] and his pledge of active participation is neither rebutted nor inherently implausible.

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[9] *See* Tr. 63.

[10] We purposely deferred taking up this reconsideration until the integration/local residence issue was treated more fully in *Merrimack*.

[11] *Policy Statement, supra*, 1 FCC 2d at 395.

[12] *Cf. Waters Broadcasting Corp.*, FCC 82–483, released December 1, 1982 (reversing 88 FCC 2d 1204 (Rev. Bd. 1981)).

[13] Tr. 59.

8. In our deliberations, we contemplated both the desirability and the legal propriety of requiring an actual "physical presence" for all of the hours necessary for the slight part-time integration credit. While stating that "we would certainly not have accorded *full-time* integration credit under such circumstances" (90 FCC 2d at 1051; emphasis in original) because full-time participation connotes total immersion and because full-time credit is so significant, we rejected the notion of an arbitrary "physical presence" requirement in recognizing limited managerial participation. We reflected that, although a total "physical presence" standard would be easy to administer and is a generally positive indicia of the likelihood that integration proposals will be effectuated, a hidebound requirement for total "physical presence" for part-time participation credit would concurrently demand from the Federal Communications Commission a consummate act of self-abnegation. Nearly half a century ago, this agency was constituted by Congress to harness and promote the nascent phenomenon of telecommunications. Its purpose was to assure that "physical presence" was not an absolute prerequisite to the meaningful exchange of intelligence. Over the past fifty years, we are to be accorded (immodestly) at least some success in effecting Congress' intent. Today, a vast cornucopia of telecommunications services, ranging from telephone/telegraph to satellite-transmitted data packets and from facimile transmission to video teleconferencing, is available and widely utilized. It would be folly to hold as a matter of law, for example, that the president of United States Steel, whose office is in Pittsburgh, does not meaningfully or actively participate in the management of company installations in other cities. The same principle appertains to General Motors (or, indeed, to the FCC's management of its own field offices). It would be supremely paradoxical, we believe, if the Federal Communications Commission itself were to rest adjudications on the orthodoxy that "physical presence" is the *sine qua non* of even limited managerial participation. For the *Policy Statement's* predictive expectations to have any real meaning, those predictions must be interpreted in accordance with the realities of the waning days of the Twentieth Century, not the Nineteenth. Whereas "physical presence" may be the best indicia of the likelihood of partial management participation, it need not be the exclusive test in all cases and a flat rule based on an assumption—however easy to administratively implement—may be impermissible. Adjudication requires the examination of *all* pertinent facts and circumstances. *Cf. WAIT Radio* v. *FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

9. None of this is to say that the "slight" credit given here to Hanna will be ceded in every case where a principal proposes remote part-time participation. Just as in every routine comparative case, integration proposals will be subject to the requisite "hard look" and will be granted only if the attendant facts and circumstances give rise to a "reasonable

likelihood that the proposals will be fully effectuated" *Central Texas Broadcasting Co., Ltd., supra*, 90 FCC 2d at 586. That is the applicable precedential standard for testing *any* integration proposal, no more and no less. For the reasons stated above and more extensively discussed in the Decision, Hanna has met that historic legal standard in this particular instance and there is no legal basis or probative evidence on the record to summarily reject his forthrightly limited proposal.

10. Greater Wichita's third argument—that it now be permitted to propose the integration of three of its principals—is far off base. Claiming shock and surprise that Columbia's proposed part-time integration of Hanna was credited and that such accreditation amounted to the establishment of a new administrative standard, Greater Wichita seeks to reopen the case so that it may upgrade its application. However, Hanna's integration proposal was litigated at hearing (*see* Initial Decision, 90 FCC 2d 1056 at 1065–1067 and 1074) and the standard applied by the Board was the identical standard applied in every case. That is, whether the applicant "demonstrate[d] a reasonable likelihood that the proposals will be fully effectuated." *Central Texas Broadcasting Co., Ltd., supra*, 90 FCC 2d at 586. That standard is the *only* standard relevant and the fact that Greater Wichita would like a tighter standard never articulated before (*i.e.*, unremitting "physical presence") does not support its position. Greater Wichita was not estopped at hearing from proposing its own integration and having it subjected to the "reasonable likelihood" standard. Having failed to do so then, it may not do so now. *Birmingham Family Television, Inc.*, FCC 82R–59, released October 1, 1982.

11. Finally, Columbia insists that it was wronged by the Board's failure to award it a *per se* diversification credit because the Greater Wichita principals own a UHF station in Charleston, West Virginia, 900 miles away. Despite the fact that two of Columbia's principals have some minor media interests in Wichita itself, Columbia asserts that it is entitled to a dispositive preference because the Wichita station would be a first for it and a second for the principals of Greater Wichita.[14] It cites for authority *Bamberger Broadcasting Service, Inc.*, 11 FCC 211 (1946). The short answer here is that *Bamberger* preceded the *Policy Statement* by some twenty years and the *Policy Statement* calls for a comparative evaluation of all media interests. In this case we found those interests insignificant insofar as a diversity of voices in Wichita and essentially cross-cancelling. We did note, however, that if Columbia's rigid formulation were correct it would only strengthen its grip on the instant permit.[15] Nothing pleaded here warrants alteration of that view.

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[14] Both applicants have applied for other TV licenses. *See* Decision, 90 FCC 2d at 1050 n. 4

[15] Decision, 90 FCC 2d at 1054–1055 n. 10.

12. ACCORDINGLY, IT IS ORDERED, That the petition for leave to amend, filed November 19, 1982, by Columbia-Kansas TV, Ltd., and the motions for leave to amend, filed August 31 and November 30, 1982, by Greater Wichita Telecasting, Inc., ARE GRANTED; and

13. IT IS FURTHER ORDERED, That the petition for reconsideration and the contingent motion to reopen the record and remand for further proceedings, filed August 30, 1982, by Greater Wichita Telecasting, Inc., ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal *Member,* Review Board

Common Carrier, Interconnection, Specialized Common Carrier
Common Carrier, Resale
Message Telecommunications Service
Wide Area Telephone Service (WATS)

Second Report and Order adopted regarding open entry policy in the Alaskan interstate MTS–WATS market will be in the public interest. The order analyzes and rejects various detrimental impact arguments.

Market Structure (Phase II)
CC Docket No. 78–72

FCC 82–515

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter

MTS–WATS Market Structure Inquiry	CC Docket No. 78–72 Phase 2

SECOND REPORT AND ORDER

Adopted: November 18, 1982 Released: November 30, 1982

BY THE COMMISSION:

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1. On January 8, 1981, Alascom, Inc., filed supplemental comments in response to the Commission's *Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking*, 81 FCC 2d 177 (1980) [hereinafter cited as *Third Supplemental Notice*], in the above-captioned proceeding. These comments, including a study alleging substantial economic impact from competitive entry, presented Alascom's arguments that entry in the Alaskan MTS–WATS market should be restricted. On March 25, 1981, the National Telecommunications and Information Administration (NTIA), General Communication, Inc. (GCI), Southern Pacific Communications Company (SPCC), MCI Telecommunications Corporation (MCI), and OTZ Telephone Cooperative, Inc., and Mukluk Telephone Company, Inc. (OTZ/Mukluk), jointly, filed responses opposing Alascom's supplemental comments. Alascom filed rebuttal comments on June 22, 1981.

2. On July 7, 1982, Alascom filed a pleading requesting the Commission to seek additional information concerning the direct and indirect effects of the settlement of the Department of Justice's antitrust suit against the American Telephone and Telegraph Company[1] *U.S. v. AT&T*, No.

[1] On August 24, 1982 the United States District Court for the District of Columbia issued an order entering the decree as modified in accordance with an August 11, 1982 order of that court.

74–1698 (D.D.C., filed November 20, 1974), on support for statewide service in Alaska. It also submitted a study by SRI International entitled "Telecommunications Alternatives for Rural Alaska: Commercial Feasibility and Social Benefits" for the Commission's consideration. GCI filed an opposition to Alascom's motion on July 19, 1982. Alascom filed a reply to GCI's opposition on July 29, 1982.

3. In this decision, the Commission evaluates Alascom's contentions regarding the Commission's tentative conclusion in the *Third Supplemental Notice* that the Alaskan MTS–WATS market should be subject to the same open entry policy applicable in the contiguous states. The order considers whether benefits to the public interest will accrue from an open entry policy and finds that significant benefits can be anticipated. The Commission also reviews Alascom's economic study alleging detrimental impacts from competitive entry and concludes that the model contains serious deficiencies that invalidate its results. The Commission also concludes that other allegations of adverse effects from an open entry policy are invalid or of neglible significance. The Commission ultimately affirms its tentative conclusion that an open entry policy in the Alaskan interstate MTS–WATS market will be in the public interest.

I. Background

4. This proceeding was instituted in February 1978 in order to determine "whether the public interest requires that . . . MTS and/or WATS, or their functional equivalents, should be provided on a sole source basis (*i.e.*, free from direct competition)." *Notice of Inquiry and Proposed Rulemaking*, 67 FCC 2d 757 (1978). We subsequently issued a *Supplemental Notice of Inquiry and Proposed Rulemaking*, 73 FCC 2d 222 (1979) [hereinafter cited as *Supplemental Notice*], which invited interested persons to submit comments describing an optimal industry structure for the MTS–WATS market, including an entry policy and other related regulatory policies (*e.g.*, allocations of investments and expenses among jurisdictions, contractual arrangements among carriers for the distribution of interstate revenues, and charges to carriers for the use of facilities of other carriers) which in combination will be most likely to produce results that further the goals of the Communications Act.

5. In *Memorandum Opinion and Order*, 75 FCC 2d 644 (1980), the Commission rejected Alascom's request that Alaska be excluded from the inquiry into the appropriate MTS–WATS market structure. The Commission concluded that Alascom's predecessor[2], RCA Alaska Communica-

[2] The United States Air Force provided telecommunications service to Alaska prior to 1971 as an adjunct to its defense communications system. In 1971, pursuant to the *Alaskan Disposal Act*, 44 U.S.C. § 771 *et seq.*, the Air Force facilities were transferred to RCA Alaska Communications, Inc. In 1979, the RCA facilities were transferred to Alascom, which is a wholly-owned subsidiary of Pacific Power and Light Company. In 1982, Alascom was transferred to Pacific Telecom, which is a subsidiary of Pacific Power and Light Company

tions, Inc., had not acquired any sole-source rights when it acquired facilities from the United States Air Force in 1971. It also concluded that the decision in *Domestic Communications-Satellite Facilities*, 38 FCC 2d 665 (1972) [hereinafter cited as *Domsat III*], had not established a sole-source policy for MTS–WATS service to Alaska, although even if it had, the Commission could reevaluate any such policy in light of changed circumstances.

6. After the industry model comments were filed, we concluded that certain questions relating to the compensation of local exchange carriers for the origination and termination of interstate telecommunications and the allocation of exchange plant investment and associated expenses between interstate and intrastate services should be resolved as soon as possible. We accordingly issued a *Second Supplemental Notice of Inquiry and Proposed Rulemaking*, 77 FCC 2d 224 (1980) [hereinafter cited as *Second Supplemental Notice*,] which invited interested persons to comment upon a tentative plan for prescribed access charges. In a separate proceeding, we established a joint board to consider revisions to the Jurisdictional Separations Manual with respect to exchange plant and related expenses. *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, 78 FCC 2d 837 (1980) [hereinafter cited as *Docket No. CC 80–286]*.

7. *In the Third Supplemental Notice* the Commission concluded that a general policy of open entry in the domestic MTS–WATS market, including Hawaii, would be in the public interest,[3] while providing for further consideration of issues relating to the Alaskan submarket. (*See* paragraph 11–14, *infra.*) No party argued for solesource supply for the contiguous states and Hawaii, although some of the detrimental effects of competition that had been alleged over the years were mentioned. The parties presumably concluded that these did not offset the benefits per-

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[3] Alascom contends that the Commission failed to fulfill its statutory obligations in adopting an open entry policy for the contiguous states' MTS/WATS market. If the Commission should modify its contiguous states' policy, Alascom submits that the Commission would be compelled not to adopt an open entry policy for Alaska. It argues that the Commission must affirmatively determine the public interest by balancing the benefits and detriments of an open entry policy; that a public interest determination cannot rest on the failure of industry participants to oppose an open entry policy; that the Commission dismissed detrimental effects through legal theories which were never subjected to public comment and on factual assumptions not supported by the record; and that the Commission failed to take adequate steps to obtain the record to support the findings it made. To the extent that these arguments suggest that the Commission should reconsider its decision in the *Third Supplemental Notice*, Alascom's comments were not filed within the statutory thirty (30) days in which petitions for reconsideration must be filed. 47 U.S.C. § 405(a). Accordingly, Alascom's suggestion that the *Third Supplemental Notice* should be reconsidered is not timely. Moreover, we believe that a careful review of the *Third Supplemental Notice* reveals that the Commission, in the exercise of its judgment based on its experience and expertise, did in fact carefully evaluate the benefits and detriments perceived to flow from an open entry policy and made the public interest determination that an open entry policy for the provision of MTS/WATS in the contiguous states and Hawaii would be beneficial.

ceived to flow from a competitive marketplace. However, the Commission examined these alleged detrimental impacts to ensure that a general policy of open entry would be consistent with the public interest.

8. The Commission concluded that competitive entry can best assure adequate facilities in the long run, and that such competitive entry is more likely to result in an efficient allocation of resources than is a monopoly structure. The Commission specifically found that the record did not show that unrestricted competition in the interstate interexchange market would result in any meaningful losses of economies of scale, nor would it produce any derimental effect on the national defense or safety of life and property.

9. The Commission observed that independent telephone companies were engaged largely in the provision of local exchange service. It noted that if competing interstate interexchange carries pay comparable rates for the same local exchange facilities, there can be no substantial threat to local exchange carriers. The aggregate compensation received by exchange carriers for the origination and termination of interstate services is determined by the jurisdictional separation process. This allocation between interstate and intrastate jurisdictions is currently being considered by a Joint Board in *Docket No. CC 80–286*. Any access charge plan would allocate the costs assigned to the interstate jurisdiction to services which would produce an amount equal to the aggregate revenue requirement for local exchange carriers assigned to the interstate jurisdiction. Therefore, interstate interexchange competition is not likely to impair the ability of independent telephone companies to provide service to their subscribers and will not cause an increase in local exchange or other intrastate rates.

10. Addressing concerns over potential rate deaveraging, the Commission found that decisions striking down deaveraged rates were based on eliminating rate discriminations prohibited by Section 202(a) of the Communications Act of 1934, as amended, 47 U.S.C. 202(a), rather than on a Commission policy requiring rate averaging. A move to deaveraged rates as a result of interexchange competition was considered improbable, at this time, particularly in light of AT&T's statement that it did not foresee deaveraged MTS–WATS rates in the near future. The Commission noted that there are substantial administrative costs involved in providing cost justification of deaveraged MTS–WATS rates and that averaged costs are used in many competitive industries. In any case, the Commission further noted that the record did not support a finding that rate deaveraging would be contrary to the public interest. The Commission rejected the theory that the specialized carriers will adopt a cream-skimming approach to service, observing that the specialized carriers have adopted policies of rapidly expanding their service areas.

11. Alascom's comments with respect to entry in the MTS–WATS market between Alaska and the contiguous states essentially raise the same arguments for restricting entry as were made for restricting entry generally. The Commission found that new entrants would be likely to lease Alascom's facilities. Under such a scenario, intrastate toll and exchange rates would not be affected, although its interstate profits might be affected because of lower earning levels for private line than for message services. Such a shift in interstate profits would not affect intrastate rates because interstate profits cannot be considered in setting intrastate rates. The Commission then stated that it could not foresee circumstances that would cause it to waive the policy integrating Alaskan MTS–WATS rates into the uniform pattern for the contiguous states, which policy constituted a Section 214(c) condition that Alascom had accepted.

12. Although Alascom had not performed the requested quantitative analysis to support its allegations of detrimental effects from competitive entry, the Commission concluded that Alascom should be allowed a further opportunity to make such a showing since settlements, separations, and rates had been in a state of flux at the time the industry model comments were filed. The Commission then concluded that if Alascom "fails to make a threshold showing that the competitive offering of voice services will have a crippling effect upon Alascom which will impair the availability or quality of services available in Alaska, we will terminate the entry policy inquiry." *Third Supplemental Notice, supra* at 198. If such a showing were made, the effects would be weighed in determining whether service restrictions in the Alaskan submarket would serve the public interest.

13. The Commission rejected Alascom's contention that competing carriers should be required to show that competition will produce quantifiable beneficial effects before the Commission would weigh the costs and benefits of competition. It noted that a regulatory agency may draw on competition for complementary or auxiliary support. Stated otherwise, competition is an affirmative benefit that may be weighed against detrimental effects in making a public interest determination. Moreover, substantial consideration must be given to competitive factors in making public interest determinations. The Commission adopted a standard that any action that prevents or lessens competition is deemed to be contrary to the public interest in the absence of a showing that the action is necessary to avoid evils that the regulatory statute was designed to prevent or to produce results that the regulatory statute was designed to achieve. The Commission concluded that the public interest must be interpreted as creating a presumption in favor of competition unless the language or history of the statute demonstrates a Congressional purpose

to restrict competition, which purpose is not demonstrated by the 1934 Act.

14. The Commission found that public interest benefits would accrue from competitive entry in the Alaskan submarket and that Alascom would be required to show detrimental effects outweighing these competitive benefits even if Alascom's interpretation of the relevant case law were accepted. The Commission observed that it had noted benefits from lowering barriers to entry in other regulatory areas and anticipated that similar benefits would accrue from the lowering of the regulatory barriers to entry in the MTS–WATS market in Alaska. The Commission concluded that competition would result in telecommunications service provided at the lowest possible cost, reduction or elimination of waste, an increase in the responsiveness of carriers to the needs and desires of the consumers, and more rapid and efficient responses by the carriers to technological change and innovation. The Commission noted that viable competition would be most likely to succeed when all services within an industry are subject to competitive forces, thereby constraining the behavior of the dominant firm. The Commission concluded that preserving the possibility of competition would be as beneficial in the Alaskan submarket as it is in the contiguous states, that a decision to designate the Alaskan submarket as a protected enclave would be a departure from the general policy, and that we did not intend to depart from the policy in the absence of clear and convincing evidence that the creation of a protected enclave was necessary to avoid evils that the Communications Act was designed to prevent.

II. The Alaskan Market

15. The State of Alaska is the largest state in the Union, containing approximately 586,000 square miles. Its population in 1980 was approximately 403,000, which represents a 33 percent growth over 1970. Much of this population is concentrated in the three principal cities, Anchorage, Fairbanks, and Juneau. According to testimony in 1977 before the Alaska Public Utilities Commission, as referenced by Alascom in Appendix A, p. 98, of its Supplemental Comments, personal income in Alaska exceeds that of the rest of the nation by 42 percent, and living costs are forty percent higher. However, many residents of the bush communities are native Alaskans, who, according to Alascom, exist at subsistence levels.

16. Interexchange telecommunications service in Alaska is provided over a combination of satellite, microwave, and cable facilities. Microwave facilities are used for trunking between the three major toll switching centers, located in Anchorage, Fairbanks, and Juneau, and for a limited number of terrestrial communications lines with the contiguous states. The majority of communications lines are provided by satellite facilities, with all service to the bush being via satellite. Alascom's satellite earth

station network has two gateway facilities—the Bartlett and Eagle River earth stations—which are located near Fairbanks and Anchorage, respectively. There are also midroute and bush earth stations. The midroute facilities serve communities with demand greater than that of bush communities. One of these, Lena Point, which is located near Juneau, receives direct interstate communications while all other mid-route facilities receive interstate MTS-WATS transmissions after such transmissions have been switched at one of the three toll switching centers associated with the Anchorage, Fairbanks, and Juneau earth stations. All telecommunications service to the bush earth station facilities must pass through the Bartlett earth station and are transmitted over FM, single channel per carrier systems.

17. In 1979, Alascom served approximately 160 bush communities. More than 100 of these were served by small earth stations with 41 communities being served by improved mobile telephone service. Health services to many of these communities are provided by the Native Health Service which utilizes private line circuits priced at intrastate rates to communicate with doctors located in larger cities. Exchange service is provided in Alaska by 26 operating companies which have loans from the Rural Electrification Administration totalling more than $50 million. Many of these exchange companies are municipally owned or are small cooperatives. Telephone penetration in Alaska is 76 main telephones per 100 households compared to 96 per 100 households in the ,ontiguous states.

18. Alascom has been the sole supplier of interstate and intrastate interexchange service in Alaska since 1971. Alascom settles with the exchange carriers on the basis of the NARUC/FCC separations manual, § 47 C.F.R. 67.01, and receives settlements for interstate MTS–WATS service from the interstate MTS–WATS settlements pool. Interstate MTS–WATS rates in Alaska are partially integrated at the present time with the rates applicable in the contiguous states. The final step of MTS–WATS rate integration is scheduled to occur on January 1, 1985.

19. Private line rates are established by Alascom to recover the costs assigned to the private line service. Alaskan private line rates are not integrated with contiguous states' private line rates and Alascom does not receive settlements from the interstate private line pool for the cost and return associated with private line service. Rather, rates are established on an end-on-end basis with applicable contiguous states' rates, and settlements are based upon the underlying tariff rates.

20. Alascom also provides record service to Alaska. Some television transmission service to Alaska is provided over the facilities of the Western Union Telegraph Company. Several carriers have been authorized to provide resale services to Alaska, *e.g.*, *Applications of DHL Communications, Inc.*, released December 30, 1980. GCI has been authorized to

construct earth station facilities to provide common carrier service between Seattle and the cities of Anchorage, Fairbanks, and Juneau. *Applications of General Communication, Inc.*, Mimeo No. 001099, released May 27, 1981. These authorizations are conditioned on the outcome of this proceeding.

21. Alascom's revenues for 1981, net of uncollectibles, were $200,329,096. This was a $34,464,405 increase over 1980. This was broken down among services as follows: local service, $188,794; interstate and foreign MTS, $129,613,131; interstate and foreign WATS, $1,548,706; interstate and foreign private line, $29,686,691; intrasate MTS, $20,542,826; intrastate private line, $9,579,301; and total miscellaneous revenues, $10,179,093. Uncollectible revenues amounted to $1,076,828. Revenues from foreign telecommunications services were $2,732,520. Alascom's operating income was $35,797,918 on total plant in service of $370,105,909 and work in progress of $45,785,739 as of December 31, 1981.

III. Party's Comments

22. Before addressing the issues in detail, we shall briefly summarize the parties' positions. Their detailed arguments will be addressed as relevant to the consideration and resolution of the various issues.

23. Alascom contends that the Commission relied on factual assumptions not supported by the record and on legal conclusions that conflict with Section 214 and relevant judicial interpretations thereof. Alascom argues that the Commission has in the past made clear and lawful policy determinations, based on a full factual record, that there should not be new MTS–WATS entry and that there should be new private line entry only on a special showing that the public benefits would outweigh the harms, including injury to Alascom. Alascom contends that it has relied on those findings and that nothing in the record supports reversing them. In light of unique historical and factual circumstances relating to Alaska, it is asserted that the detrimental effects of premature competitive entry in the Alaskan submarket outweigh the alleged benefits of such entry. Alascom contends that the Commission in adopting a presumption in favor of competitive entry has misapplied the holdings in *FCC v. RCA Communications, Inc.*, 346 U.S. 86 (1953) [hereinafter cited as *FCC v. RCAC*], and *Hawaiian Telephone Company v. FCC*, 498 F. 2d 771 (D.C. Cir. 1974) [hereinafter cited as *Hawtel v. FCC*], and thus has not met its burden under Section 214 of determining that facility authorizations for competitive entrants are required by the public convenience and necessity. Alascom also contends that the Commission erred in placing the burden of proving detrimental impact on it, rather than requiring entrants to demonstrate that their services will be in the public interest.

24. Alascom has submitted several studies which it contends demonstrate that competitive entry, either on facilities leased from Alascom or

on separate facilities, decreases the efficiency of traffic carriage, leading to wasteful resource allocations, that its earth stations and terrestrial microwave facilities are adequate to handle traffic for a considerable future period at the cost of adding only channel equipment, and that it would be deprived of important economies of scale if entry were authorized. Alascom also states that sixty percent of its interstate MTS revenues are attributable to Anchorage, Fairbanks and Juneau, while close to eighty percent of its circuit costs are associated with circuits to serve other parts of the state, thereby creating a significant reliance on revenues from the dense routes.

25. Alascom asserts that its economic model demonstrates that significant detrimental impact to Alascom and Alaskan ratepayers will result from the extension of the Commission's open entry policy to Alaska. These impacts assertedly will affect both intrastate and interstate services through the allocative procedures used by the separations manual - particularly the use of equivalent circuit miles. The methodology used by Alascom in its economic study and the results of that study are presented in Section VII of the item.

26. Alascom contends that competitive entry, either on leased or separately constructed facilities, will result in significant revenue shortfalls by 1985 with full competitive entry; adverse affects on Alaskan exchange carriers, resulting in higher local exchange rates; authorization of intrastate competition with consequential increased detrimental impacts; increased assignment of costs to the intrastate jurisdiction through the operation of the separations manual resulting in the need to increase intrastate rates; and increased subsidies from the interstate settlements pool as a result of lower utilization of the same facilities. If entry is authorized on separate facilities, Alascom contends it will be forced to deaverage its rates on the dense private line routes and increase rates on the thin private line routes which will result in significant revenue short falls.

27. Alascom argues that MTS–WATS equivalents, if permitted, must be furnished on a basis that requires competitive entrants to shoulder a *pro rata* share of the cost of statewide service. It suggests that competitive entry be limited to the resale of WATS service or through the leasing of Alascom circuitry pursuant to a tariff which would charge entrants on the same basis as that upon which MTS–WATS settlements from AT&T now rest.

28. The parties responding to Alascom's *Supplemental Comments* generally dispute Alascom's interpretation of the relevant standard to be applied in determining whether to allow additional entry in the Alaskan MTS–WATS market. MCI submits that *FCC v. RCAC* holds that the Commission must at least warrant that competition will serve some beneficial interest, and that the Commission's conclusion in the *Third*

Supplemental Notice is grounded in the many specific benefits of competition which the Commission in many other proceedings has found to exist. NTIA states that the standard the Commission must apply is the public interest and that competition is one among many elements that must be considered in its determination. NTIA distinguishes *FCC v. RCAC* and *Hawtel v. FCC* as cases in which the Commission relied on competition *per se* as a basis for determining the public interest, while in this proceeding the Commission has not relied on competition as the only factor it will consider. SPCC and GCI argue that Alascom has never been granted a sole-source status as supplier of telecommunications service to Alaska and that the Commission, therefore, would not be changing its policy if it authorized additional entry. Several parties argue that the findings in the *Third Supplemental Notice* apply to Alaska unless Alascom demonstrates a substantial adverse impact in its *Supplemental Comments*, a threshold that has assertedly not been met. Several parties also state that the Commission is free to make the entry determination in a rulemaking proceeding and to apply these findings to subsequent cases before the Commission.

29. Every party opposing Alascom's *Supplemental Comments* argues that substantial benefits will accrue from an open entry policy. OTZ/Mukluk, Alaskan local exchange carriers, argue that the award of a monopoly to Alascom would be contrary to the rapid development of modern, efficient and innovative communications in Alaska, particularly in the bush.[4] OTZ/Mukluk are uncertain whether subsidies actually exist and, if so, in which direction they flow, and question the desirability of maintaining such subsidies because restricting entry leads to "allocative and equitable costs." MCI states that ease of regulation and fostering of innovation are appropriate reasons for determining competition to be in the public interest and need not be based exclusively on a determination that a market is so large as to mandate such competition. NTIA believes that the pricing incentives that exist in a free competitive market generally serve the public interest by promoting cost based pricing which encourages economically more efficient supply and consumption of facilities and services. NTIA favors a direct subsidy through a surcharge on access charges to ensure socially reasonable prices for service to bush communities which, in a competitive marketplace, may not be economically sustainable without such support. NTIA finds legal support for such a direct subsidy in Section 1 of the Act. All parties cite the numerous Commission decisions finding benefits from competitive entry in other

[4] OTZ/Mukluk raised the issue of ownership of the bush earth station facilities. This question is under consideration in *Docket No. CC 80–584, Policies governing the ownership and operation of domestic satellite earth station in the Bush communities in Alaska*, 81 FCC 2d 304 (1980). Since competing service is not the issue in that *Docket*, there is no direct impact on the entry question. Accordingly, the issues raised concerning that proceeding are not considered herein.

services and markets as supporting a finding that benefits will accrue from competitive entry in the Alaskan MTS–WATS market. Several parties contend that Alascom is using the regulatory process to maintain a monopoly that is contrary to the public interest and that monopoly supply introduces additional costs, such as uneconomic construction and unnecessary administrative costs engendered in the regulatory process.

30. Several parties criticize the methodology and assumptions used by Alascom in constructing its economic model. These criticisms are outlined in Section VII in conjunction with the outline of Alascom's model. All parties responding to Alascom's *Supplemental Comments* conclude that Alascom has not demonstrated that the public interest would be served by a restrictive entry policy, and that, therefore, the Commission should conclude that Alaska should be subject to the same entry policy that applies to the other forty-nine states.

IV. Status of Previous Decisions on Alaska.

31. Alascom argues that the Commission has adopted special policies regarding telecommunications services to Alaska because of the unique conditions in Alaska and that Alascom has a special status arising from its acquisition of the facilities of the United States Air Force in 1971 pursuant to the *Disposal Act*. Alascom contends that the Commission's decisions relating to Alaska since 1971 have established a policy favoring sole-source supply, in order to give it every legitimate opportunity to improve and expand interstate communications and to ensure that the carrier was financially able to meet its obligations to develop and maintain statewide service, and maintains that, absent this federal intervention, this system would not have been constructed as it was. It contends that the record in *Domsat III* contains sufficient discussion of the unique conditions in Alaska to support a public interest finding restricting MTS–WATS entry in the Alaskan market.

32. The Commission has previously addressed the special status claims of Alascom in *Memorandum Opinion and Order, supra*. In that decision, the Commission concluded that "Alascom did not obtain any special status when it acquired the Air Force facilities." *Id.* at 646. This point is emphasized by the Commission's language in approving the application of RCA Alaska Communications, Inc., to acquire the Alaskan Communication Service from the United States Air Force pursuant to the *Disposal Act*, where it stated:

> While the situation with respect to initial licensing of these facilities is unique, we do not intend, once these facilities are operated by private ownership, to perpetuate this unique status. This Commission does not grant franchise or exclusive service areas as do many State commissions. Each application of RCAA or other entities for new facilities will therefore be considered on its own merits pursuant to the requirements of the Communications Act.

Applications of RCA Alaska Communications, Inc., 22 FCC 2d 200, 204 (1970). There can therefore be little doubt that the Commission at that time believed that RCA Alaska Communications, Inc., had not obtained any *de jure* rights under the *Disposal Act* to operate the acquired facilities as a monopoly. Furthermore, the decision in *RCA Alaska Communications, Inc., et al.*, 26 FCC 2d 466 (1970), concluded that the facilities RCA Alaska Communications, Inc., purchased from the U.S. Government had been interconnected at the earth station in the contiguous states rather than at the satellite, and that this interconnection arrangement should continue for the acquired facilities. It is an erroneous reading of the case to say that the decision to require continued interconnection at the earth station equates to a finding of a sole-source policy for Alaska.

33. The two decisions dealing with record communications that Alascom cites are distinguishable. In *Western Union International, Inc., et al.*, FCC 71M–1405 (August 30, 1971), the Commission denied applications of Western Union International and ITT World Communications, Inc. for authority to provide certain record services between Alaska and other points. Alascom notes that the 1971 order said "that the communications market in Alaska now, and for the foreseeable future, is too marginal to support a reasonable expectation that competition may have some beneficial effects." Alascom asserts that conditions have not changed in any material way since that order was issued. That order, in and of itself, cannot be construed as granting Alascom sole source status with respect to any service. It reflects an appraisal of market conditions at a particular time and does not purport to establish a closed entry policy for all time.

34. Alascom contends that the reconsideration of *Domestic Public Message Services*, 73 FCC 2d 151, 155–6 (1979), found that a record for open entry in the public message services in Alaska had not yet been compiled and that a sole-source policy for record service existed in Alaska. In *Domestic Public Message Services*, 71 FCC 2d 471, the Commission evaluated the public message service market, found that the benefits of entry would outweigh any potential harms, concluded that the public interest would be served by an open entry policy in the public message service, and authorized Graphnet, Inc., certificates of convenience and necessity to carry the domestic portion of international public message service. Alascom attempts to read too much into the reconsideration decision in *Domestic Public Message Services, supra.* That decision found that the Commission had not investigated record service to Alaska. Thus, there was no record on which to make a decision. Since no policy was adopted with respect to record service in Alaska in that proceeding, the policy remains the same as it had been prior to that proceeding. That policy was that the Commission reviewed applications for record service to Alaska on an ad hoc basis to determine whether they would serve the public convenience and necessity. Since there was no

record developed in that proceeding concerning record service to Alaska, it cannot be argued that the Commission adopted a sole-source policy in that proceeding.

35. *Domsat III* expressly reaffirmed the decision to entertain domestic satellite applications from entities other than telephone companies that might wish to use such facilities to provide specialized services to Alaska. That order said:

> We do not regard this policy as unduly prejudicial to RCA Alascom, since no duplicate facilities will be authorized for the provision of the interstate MITT[5] service which concededly constitutes the bulk of the interstate business and revenues that are its 'life blood.' Furthermore, such applicants will be required to show with specificity how a grant of their application will serve the public interest and how they will provide tangible benefits in the form of new and better service, lower rates, etc. We will also consider the impact of a grant on the ability of RCA Alascom to discharge its responsibility to Alaska.

Id. at 696.

Alascom contends that by this language the Commission created a sole-source policy for the provision of MTS–WATS service to Alaska, and a special showings policy for entrants seeking to provide specialized services. It asserts that no carrier can be authorized until the Commission meets the requirements of Section 214(a), and if entry is authorized for the provision of specialized services, it believes the analysis in *Domsat III* is sufficient to support a Section 214(c) condition precluding an entrant from offering MTS–WATS equivalent service.

36. The *Execunet I* court, in interpreting Section 214 of the Act, rejected the proposition that carriers could not offer services that were not contemplated at the time their facility applications were granted and held that a Section 214(a) authorization permits a carrier to offer any service which the authorized facility can be used to provide in the absence of a Section 214(c) condition. *MCI Telecommunications Corp. v. FCC*, 561 F. 2d 365 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978). The court also concluded that a Section 214(c) condition cannot be imposed unless the Commission finds that a carrier's provision of a particular service will be likely to produce results that are detrimental to the public interest. In *Memorandum Opinion and Order, supra*, we concluded that:

> the *Execunet I* decision would preclude this Commission from imposing any condition that prohibits the use of authorized facilities to provide MTS–WATS or any other service in the Alaska interstate market in the absence of such a detrimental effect finding. The *DOMSAT III* statement that duplicate facilities will not "be authorized for interstate MIT service" indicates that this Commission may have believed in 1972 that such competition would have detrimental effects. However, the *DOMSAT III* opinion

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[5] MTS was formerly referred to as MTT.

> does not provide any explanation of the reasons for such a belief. The *Execunet I* opinion at least implicitly requires that any Section 214(c) condition restricting service offerings be supported by an articulated explanation of the reasons for the restriction. Such a Section 214(c) condition could not be imposed on the basis of a single conclusory sentence in the *DOMSAT III* order.

Memorandum Opinion and Order, supra.,at 648.

37. A review of the industry and regulatory posture at the time of the Commission's decision in *Domsat III* will be helpful in determining the breadth of the holding therein. Satellite communication was in its infancy and offered an uncertain potential of reduced costs due to distance insensitive costs. Alascom was the sole provider of basic telecommunications service to Alaska. In the contiguous states, AT&T provided the basic interstate MTS–WATS service in conjunction with independent telephone companies who concurred in AT&T's interstate MTS–WATS tariffs. Finally, the Commission had just adopted the policy authorizing new common carriers to provide specialized private line telecommunications services in the contiguous states.

38. In *Domsat III* the Commission affirmed the policy integrating Alaskan MTS–WATS rates with those of the contiguous states and provided that specialized services could be provided by independent carriers. The decision directed that AT&T and Alascom should provide MTS–WATS service at integrated rates to be developed in the future and indicated that no duplicative MTS facilities would be authorized. The ultimate question is whether the Commission considered or made any decision concerning the possible benefits of competition in MTS–WATS service in this decision. Given Commission policy and understandings at that time, the apparent answer is no.

39. In the early 1970s, as we have noted, AT&T and Alascom were the only carriers offering MTS–WATS service. It was, therefore, quite logical for the Commission, in adopting a rate integration policy, to direct these two carriers to develop and offer such a service at integrated rates. Moreover,the Commission believed that in authorizing specialized private line services by new carriers it had not adopted a policy that would in any way affect the offering of MTS–WATS by traditional telephone carriers. Thus, to argue that the Commission considered the possibilities of competition in the MTS–WATS market and rejected it is to impute to the Commission precognition that it clearly did not possess. Furthermore, given the conclusory nature of the statements in the decision, it is clear that the Commission's decision is not based on an analysis of any possible competitive alternatives. The Commission, therefore, merely recognized the existing *de facto* monopoly and cannot be said to have created a sole-source policy based on a reasoned analysis of the public interest ramifications of competitive supply. Under this reading of the decision, it is clear that the analysis at that time would be inadequate to support the imposi-

tion today of a 214(c) condition on facility authorizations for specialized services to Alaska. It is clearly appropriate for the Commission to now consider whether competitive entry in the Alaskan MTS–WATS market would be in the public interest.

40. Even if *Domsat III* were interpreted to mean that a solesource policy had been adopted for the Alaskan MTS–WATS market, we did as noted in *Memorandum Opinion and Order, supra,* choose to make a reevaluation of that policy today in light of changed circumstances. It is clear that the Commission may reevaluate previous policy decisions in light of circumstances or conditions that exist at the time of the reevaluation. *Geller v. FCC*, No. 77–1093 (D.C. Cir. November 7, 1979). In fact, Alascom's comments recognize the Commission's right to reevaluate its policy decisions to consider changing conditions.

41. Consideration of the structure for the MTS–WATS market in Alaska is particularly appropriate at this time. In the early 1970's the transfer of the U.S. Government's communications facilities to Alascom's predecessor had just occurred, the introduction of satellite technology and its application to the Alaskan telecommunications market was in its infancy, and the Commission was embarking upon the initial policy decision to integrate Alaskan MTS–WATS rates with those of the contiguous states. Since then, satellite technology has proven extremely successful in serving Alaska, rate integration has proceeded with the final phase to be completed by January 1, 1985, *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and Hawaii and Alaska*, 87 FCC 2d 18 (1981), and the Commission has adopted a general open entry policy for the remainder of the United States. Furthermore, the population of Alaska and the telecommunications market for Alaska have both grown considerably in the past decade.

V. Legal Standard and Burden of Proof

42. Alascom contends that the Commission erred when it found that antitrust cases dealing with other regulated industries established competition as the fundamental national economic policy which must or can be read into the public interest standard of the Act unless the language or history of the Act reflects a Congressional purpose to restrict competition. It believes that the Commission erred when it held that the Communications Act created a presumption that competition produced public interest benefits. The Commission and Alascom have assertedly been denied vital information by requiring Alascom to prove the negative impact of entry without requiring would-be competitors to provide any information about their services, rates, or other characteristics or to show that benefits will accrue to the public interest from the introduction of these services.

43. We believe that Alascom has miscontrued the scope of the Commission's holding in the *Third Supplemental Notice*. We only held that the Act contained a presumption that competition would produce benefits to the public interest and that, therefore, Alascom must come forward with an adequately documented showing that competitive entry would produce detrimental effects offsetting the presumed competitive benefits.

44. Alascom contends that Section 214 requires the Commission to make an affirmative finding that additional entry will serve the public interest and that if Congress had intended to have competition be the entry standard it would have drafted a considerably different provision. In Alascom's view, a presumption of competitive benefits is not deducible, given the legislative history of the Act and the "to regulate" requirement of Section 1.

45. The language of Section 214 would be compatible with either a monopoly or a competitive market structure. In that Section, Congress was merely giving the Commission a vehicle through which it could control exit and entry to the market place. It does not mandate a particular market structure. Nor does the "to regulate" language of Section 1 add any clarity to the meaning of Section 214 since the Commission could regulate multiple providers. The legislative history of the Communications Act does not provide any clarification as to the intent of Congress in adopting Section 214. The principal sections of Title 2 of the Communications Act are derived from similar provisions of the Interstate Commerce Act, and as stated by the Senate report any "variations or departures from the text of the Interstate Commerce Act are made for the purpose of clarification in their application to communications rather than a manifestation of Congressional intent to attain a different objective." S. Report No. 781, 73rd Cong. 2d Sess. 2; see also H.R. Report No. 1850, 73rd Cong. 2d Sess. 3–7. Thus, the language of the Communications Act and its legislative history are not dispositive of the role competition may play in the Commission's public interest determinations.

46. Alascom submits that several judicial decisions directly contradict the Commission's conclusion in the *Third Supplemental Notice* that Section 214 must be construed to contain a presumption that competition will benefit the public interest. It observes that several courts have held that competition may not be equated with the public interest, *e.g.*, *FCC v. RCAC*, *Home Box Office v. FCC*, 567 F.2d 9 (D.C. Cir. 1977), *Hawtel v. FCC*, and *Mackay Radio and Telegraph Company, Inc., v. FCC*, 97 F.2d 641 (D.C. Cir. 1938). It also argues that courts have declared presumptions for and against competition unlawful, *e.g.*, *MCI Telecommunications Corp. v. FCC*, *supra*. These cases address the reliance that the Commission may place on competition in making the ultimate determination of whether to allow or restrict entry in a market where significant allegations of detrimental impact from such additional entry have been

alleged. These cases do not, however, address the critical question of whether the Commission, in structuring a rulemaking proceeding, may rely on a presumption attained from court interpretations of public interest criteria in other regulatory statutes which infer that competition will produce benefits to the public interest. Alascom has cited no case that addresses this question.

47. Alascom contends that *U.S. v. Philadelphia National Bank*, 374 U.S. 321 (1963), *FMC v. Svenska Amerika Linien*, 390 U.S. 238 (1968), and *Gulf States Utilities Company v. FPC*, 411 U. S. 747 (1973), the cases cited by the Commission, only reiterate the conclusion that the Commission may consider competitive effects in making the public interest determination. These cases, Alascom contends, do not suggest that because the Commission may consider anticompetitive effects under the public interest standard, anything that prevents or lessens competition is deemed to be contrary to the public interest unless an affirmative showing is made to the contrary. Alascom's characterization of these cases also does not address the scope of the presumption that was set forth in the *Third Supplemental Notice*. Instead, as we noted in the preceding paragraph, Alascom has focused its discussion on an interpretation of the presumption as extending to the ultimate public interest determination rather than merely to the question of whether the Commission may presume competitive benefits in light of court interpretations of the public interest standard in allocating the burden of going forward in a proceeding, or in making a public interest determination in an uncontested or summarily contested proceeding. Alascom has not presented any case which suggests that the Commission does not have such discretion in a rulemaking proceeding. Accordingly, we conclude that the standard adopted in the *Third Supplemental Notice* is a valid exercise of the Commission's discretion to assign the burden of going forward in rulemaking proceedings.

48. However, even if the Commission is incorrect in believing that the "public interest" standard contains a presumption that competition will produce benefits, we would have required Alascom to come forward with a showing of alleged detrimental impacts. The Commission policy regarding the showings to be required of interested parties was clearly set forth in the *Supplemental Notice*, *supra* at 231, where we stated:

> [w]e must, of course, establish an adequate factual predicate for the adoption of any rules. Persons who might benefit from the adoption of a particular rule have an incentive to develop and present information which supports the adoption of such a rule. Each participant should assume that any gaps in the record which might preclude this Commission from reaching a conclusive determination with respect to the effects of any regulatory policy will not inure to his benefit.

In a similar situation, the Commission assigned the party claiming the adverse impact the burden of demonstrating the alleged impact, stating:

> [t]he burden should not be upon AT&T to prove a negative—that its unconditional use of satellite facilities for competitive services will not adversely affect other carrier's domestic satellite undertakings in such a way as to run counter to the public interest. These other carriers are in the most appropriate position to advance any claim of adverse impact affecting the public interest, and the burden is upon them to come forward with a detailed, convincing showing for the continuation of this limitation upon AT&T . . . .

Domsat III, supra, at 678.

49. The requirement that Alascom advance any claim of an adverse impact from competitive entry is clearly appropriate in this proceeding. In rejecting an argument that because the Commission had interjected an issue in a proceeding, it had the burden in the first instance of establishing the technological feasibility of the shared paging system before Telocator had any obligation to produce evidence to the contrary, the United States Court of Appeals stated:

> [W]e think this view is manifestly unsound. Telocator well knew that the performance of the 'guardband' operations was a material part of the Commission's analysis; if it had evidence on the point, it should have submitted it. Compare *NAACP v. FCC, supra* note 105, at 12–13, *City of Chicago v. FCC, supra* note 105, 147 U.S. App. D.C. at 328–329, 458 F. 2d at 747–748. Whatever lingering vitality the 'sporting theory' of justice may retain in the trial courtroom, it has no place in a rulemaking proceeding, in which one's cards, to be of any value, must all be laid on the table at the outset.

Telocator Network of America v. FCC, No. 78–2218 (D.C. Cir. Oct. 5, 1982), slip op. at 29, n.114. The Commission has evaluated the benefits that will accrue and the detriments alleged to flow from an open entry policy for the MTS–WATS market in the contiguous states and Hawaii and has concluded that the public interest would be best served by allowing competitive entry. For the Alaskan MTS–WATS market, the Commission has evaluated the benefits that may arise from an open entry policy, and has concluded that a competitive policy would produce benefits to the public interest. After making this finding, the Commission provided Alascom an additional opportunity to document the alleged detrimental effects of such entry. If Alascom submitted a quantitative showing alleging detrimental effects, the Commission would evalute the benefits and the alleged detriments and make the ultimate public interest determination.

50. Pending before the Commission are several applications of competing carriers wishing to provide competitive services, including MTS–WATS equivalents, to residents of Alaska. It is therefore incumbent upon the Commission to determine whether there are any effects contrary to the public interest from competitive entry in the Alaskan MTS–WATS market before depriving Alaskans of the services proposed by these new entrants. Even if adverse impacts are to come from competitive entry, there may be other remedial measures, short of prohibition of

competitive services, to prevent or mitigate any adverse impacts. Alascom is the party in possession of the underlying data which would be necessary to demonstrate any adverse impact that may arise from open entry in the MTS–WATS market in Alaska. It is inconsistent for Alascom to argue that the Commission is not seeking to develop an adequate factual record upon which to base a decision while at the same time arguing that it should not be required to advance and document its claims of adverse impact. If the adverse effects alleged by Alascom exist, it has every incentive to place before the Commission credible evidence demonstrating these effects. In the absence of an adequately documented showing the Commission is justified in concluding that there are not detrimental effects outweighing the benefits it found in the *Third Supplemental Notice.*[6]

51. In the instant case, Alascom has come forward with a lengthy supplemental filing alleging substantial detrimental impact if the Commission were to authorize competitive entry in the Alaskan MTS–WATS market. The Commission must, therefore, evaluate these arguments and make the ultimate public interest determination. We turn now to the standard for making that evaluation.

52. Alascom argues that Section 214(a) of the Act requires the Commission to certify that the public convenience and necessity require construction or operation of a line, whether on facilities leased from Alascom or on separately constructed facilities. The language, it contends, demonstrates a clear mandate for an affirmative Commission decision, based on a showing of need by the applicant, before entry can be authorized, irrespective of whether the Commission proceeds by general rulemaking or on individual applications. Alascom maintains that Section 1 looks towards the interweaving of the economic and social welfare through regulatory supervision. Alascom further contends that the Supreme Court in *FCC v. RCAC* expressly found that an affirmative public interest finding is essential under Section 214, that the Commission has interpreted this decision to require a finding that competition is feasible and that entry of additional carriers would not impair existing service to the public, and that the Commission must determine whether the public interest requires more or different service before determining who should provide any additional service.

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[6] If the Commission does not accept Alascom's alternative entry suggestion, Alascom contends that the Commission must hold evidentiary hearings to allow it discovery from proponents of competition who relied on the burden of proof rather than providing information in the proceeding. *Washington Utilities and Transportation Commission v. FCC, supra,* held that the Commission need not conduct an evidentiary hearing when making general policy in a rulemaking proceeding. Alascom has not substantiated that an evidentiary hearing would produce additional relevant information that could not have been presented through rulemaking procedures. Accordingly, Alascom's request for an evidentiary hearing is denied.

53. The standard to be applied in evaluating the Alaskan entry question is concededly derived from the holding of the Supreme Court in *FCC v. RCAC*. In that case, the Court noted that "the fact that there is substantial regulation does not preclude the regulatory agency from drawing on competition for complementary or auxiliary support." *Id.* at 93. After noting that the Commission could rely on its expertise gained in the regulatory process, the Court stated:

> In the nature of things, the possible benefits of competition do not lend themselves to detailed forecast, *cf., Labor Board v. Seven-Up Company*, 344 U.S. 344, 348, but the Commission must at least warrant, as it were, that competition would serve some beneficial purpose such as maintaining good service and improving it. Although we think RCAC's contention that an applicant must demonstrate tangible benefits is asking too much, it is not too much to ask that there be ground for reasonable expectation that competition may have some beneficial effect.

Id. at 96–7.

54. The United States Court of Appeals set forth the Commission's duty in affirming the Commission's general policy authorizing entry in the specialized common carrier field when it stated:

> [t]he Commission's policy determination that the public interest would be served by entry of new carriers in the specialized communications field is based upon its own judgment that such authorizations are desirable, a decision reached in the conscientious exercise of the discretion vested in the Commission by Congress . . . . Against their benefits, the Commission carefully weighed possible adverse effects of competition upon existing carriers and their services . . . before finally concluding that a general policy of new entry would serve the public interest, convenience, and necessity.

Washington Utilities and Transportation Commission v. FCC, *supra* at 1159.

55. Recently, the applicable standard governing rulemaking proceedings determining entry policy was restated:

> [T]he Commission may not authorize competitive duplication of communications facilities merely on the assumption that competition is, as a general matter, a good thing. As the cases to which we earlier referred illustrate, however, the Commission may lawfully allow, and indeed encourage, entry of multiple carriers offering overlapping services, if it has reviewed the characteristics of the particular communications field involved and rationally concludes that competition in that field predictably would further the public interest in larger, more economical, and more effective service. Essentially, the Commission must be able reasonably to forecast, first, that new entry will not so severely impair the economic base of existing carriers that the industry would experience an incidence of failure so high as to impair provision of service to the public and, second, that injection of new providers will probably result in better, cheaper, or more innovative communications offerings. These forecasts must have some ascertainable foundation in the record; at the same time, however, conclusions on the future conduct of licensees, the anticipated reaction of investors, the expected course of technological development, and other assumptions about the functioning of

> tomorrow's communications market are unavoidably exercises in prediction. For such prognoses, we can require only that the agency's decisional memoranda reveal that it identified all relevant issues, gave them thoughtful consideration duly attentive to comments received, and formulated a judgment which rationally accommodates the facts capable of ascertainment and the policies slated for effectuation. [Footnotes omitted]

Telocator Network of America v. FCC, supra at 40–41.

56. These cases clearly indicate that it is within the Commission's discretion to determine whether to use competition as a complement to the regulatory processes of the Commission. The courts have held that where the Commission chooses to allow competition, it must warrant that the competition would benefit the public interest. Such a warranty must be based on a reasoned analysis of the factors leading the Commission to its decision. In making such determinations, the Commission may draw on its experience and expertise gained through years of involvement in the regulatory process. The obligation of the Commission is to weigh the benefits and detriments perceived to flow from a competitive marketplace in determining whether to authorize competitive entry in a given market pursuant to the public interest criteria of Sections 1 and 214(a) of the Act.

57. It is settled law that in general rulemaking proceedings, the Commission may evaluate a market, and need not make a route-by-route analysis in order to comply with the strictures of Section 214(a), *Western Union Telegraph Company v. FCC*, No. 79–2494 (D.C. Cir. 1981) and *Washington Utilities and Transportation Commission v. FCC, supra*. Of necessity, the Commission's consideration in a rulemaking proceeding will be more generalized than would occur in an application for construction of specific facilities. Compare *Washington Utilities and Transportation Commission v. FCC, supra*, and *Hawtel v. FCC*. That, however, does not undermine the validity of policy determinations through the rulemaking process where the Commission adequately weighs the public interest considerations in its decision. Where a party in a Section 214(a) proceeding demonstrates unusual or divergent circumstances from those considered in the general rulemaking proceeding, the Commission may authorize a departure from the general rule. However, the party must make convincing showing that the considerations underlying the general rule are inapplicable in the individualized case under consideration.

58. Alascom alleges that *Hawtel v. FCC* requires the FCC to determine whether more or better service is needed before considering the amount of additional service required and who should provide it. We do not believe the Court's holding is as restrictive as Alascom urges. The United States Court of Appeals for the District of Columbia on two occasions rejected arguments along the lines of that proffered by Alascom. It has explained that it really means facilities when it said services. *MCI*

Telecommunications Corp. v. FCC, supra. In affirming a Commission order requiring Lincoln Telephone & Telegraph Co. to interconnect with MCI, it stated that "[t]here is little doubt that the FCC may satisfy Section 214(a)'s requirement of a public interest finding through a single rulemaking proceeding." *Lincoln Telephone & Telegraph Co. v. FCC*, 659 F.2d 1092, 1101 (D.C. Cir. 1981). In an explanatory footnote the Court stated that "*Hawaiian Telephone* thus stands for the proposition the Section 214(a) requires a finding of affirmative *public interest* rather than merely a finding of *enhanced competition.* Nothing in *Hawaiian Telephone* suggests that the FCC may not satisfy Sec. 214(a)'s requirements of an affirmative public interest finding in individual cases through a single rulemaking proceeding." *Id. Hawtel v. FCC*, therefore, clearly did not go beyond the holding of *FCC v. RCAC* in the Court's view.

59. The Commission has allowed Alascom and other interested parties a further opportunity to make a quantified showing of detrimental impact. The remainder of this item is devoted to evaluating the benefits and detriments in the process of making the required public interest determination.

VI. Adequacy of the Findings of Benefits

60. Alascom contends that the record does not contain any information supporting a finding that competition will be beneficial or feasible in Alaska. It argues that both MCI and SPCC, who have expressed interest in the Alaskan submarket, only addressed general benefits that MTS–WATS competition would produce and did not make specific mention of Alaska. It further contends that the basis for the Commission's findings of beneficial effects results from its experience and findings in other service markets, which conclusions Alascom contends are irrelevant to the Alaskan submarket. Alascom finds the Commission's conclusions indistinguishable from those struck down in *FCC v. RCAC* and *Hawtel v. FCC.*

61. Alascom's argument that the comments, particularly MCI's and SPCC's, only discuss general benefits of competition and did not specifically consider Alaska misses the point. This proceeding was initiated to consider the structure for the MTS-WATS market for all 50 states. The Commission made this clear in response to Alascom's petition for clarification. *Memorandum Opinion and Order supra.* Parties were specifically requested to indicate where particular submarkets might have different characteristics that would justify a different regulatory policy. Where a party makes an unqualified claim that competition will produce benefits for the public interest, the only reasonable construction is that the party believes that such benefits will accrue in all markets under consideration, including the Alaskan submarket. Moreover, in the reply comments to Alascom's supplemental comments, every commenting party has indi-

cated that competitive benefits would accrue from the entry of additional suppliers in the Alaskan MTS-WATS submarket. See paragraph 29, *supra*.

62. In reaching its decision that there would be competitive benefits from an open entry policy in the Alaskan MTS-WATS submarket, the Commission relied upon an adequate record. The Commission noted its experience in other telecommunications markets where it had found competition to be beneficial in that it had spurred innovation and efficiency and had lead to lower prices and more and better service. The Commission then found that the record supported "our reasoned expectation that competition and the elimination of barriers to entry here will ultimately result in the provision of telecommunications service at the lowest possible cost, in the reduction or elimination of waste, in making carriers more responsive to the needs and desires of consumers, and in making carriers respond more rapidly and efficiently to technological change and innovation." *Third Supplemental Notice, supra* at 202. *See FCC v. RCAC*. The Commission concluded that these benefits were equally likely to occur in the Alaskan MTS-WATS submarket based on the record in this proceeding and the experience gained through its regulation of interstate communications to and from Alaska.[7]

63. Alascom argues that most of the benefits alleged are inapplicable to MTS-WATS, Alaska, or both. It states that no party has shown any innovation or efficiency that will result from MTS-WATS competition, that the record does not show that Alascom has not been responsive to the needs of its customers, or that new services will be offered. While each of the benefits of entry that is cited may not occur immediately or contemporaneously, the record in this proceeding, our experience, and the teachings of economic theory lead us to conclude that it is reasonable to anticipate that the public interest will be served more effectively and efficiently through a competitive environment that complements our regulatory processes. It is the provision of effective, efficient telecommunications service in the future that the Commission is concerned with in this proceeding. Competitive entry will immediately offer consumers options with respect to price and quality of the service they desire. These service options provide the incentive for all carriers to respond promptly to future consumer needs and to develop new services as demand and

[7] GCI argues that subsequent court decisions have extended the findings of the *Specialized Common Carrier Decision*, 29 FCC 2d (1971), to all markets, and that the Commission therefore is not required to find beneficial effects. We believe this reading of the subsequent court cases, *e.g.*, *MCI Telecommunications Corp. v. FCC*, *supra*, is unsupportable. The Commission has maintained a distinction between the policies applying to terrestrial and satellite facilities. Moreover, *Execunet I*, *supra*, applies only to facilities that have been authorized. At the time this proceeding was instituted, no competitive facilities had been authorized in Alaska. GCI's construction is therefore rejected. However, we are not constrained to ignore experience obtained in other competitive markets in reaching a determination as to whether competitive entry will produce benefits.

technology permit. Additionally, subscribers to Alaskan telecommunication services are in essentially the same position to receive the benefits of competition as are subscribers to services of contiguous states' carriers who concur in AT&T's tariffs.

64. The Commission was clearly within the bounds of its permitted discretion when it considered the experience it had gained in other deregulatory proceedings in deciding the approach to take in MTS-WATS market evaluation. In fact, failure to consider this accumulated experience could be viewed as being contrary to the statutory responsibility conferred on the Commission by the Communications Act and the purpose of regulatory bodies. *FCC v. RCAC*.

65. While competition is in its infancy in the MTS-WATS market, the Commission has every reason to believe that benefits will be achieved as new entrants increase their market penetration. The competitive carriers' market share has grown to approximately two percent of the contiguous states' telecommunications market in the approximate four years since *Execunet II*, *MCI Telecommunications Corp. v. FCC*, 580 F.2d 590 (D.C. Cir.), *cert. denied*, 439 U.S. 980 (1978).[8] We believe that initial pricing and service responses to the Commission's competitive initiatives are beginning to be seen in the telecommunications markets. We believe that this trend is likely to continue. To date, no adverse effects attributable to competitive entry have been discerned in the contiguous states.

66. The implementation of the consent decree in *U.S. v. AT&T, supra*, should speed up the recognition of the anticipated benefits of an open entry policy. While not directly affecting Alaskan telecommunications service, the divestiture of the Bell operating companies with the attendant interconnection and access charge provisions will result in an environment more conducive to achieving competitive benefits throughout the United States. Alaskan telecommunications service can be expected to benefit from the expansion of competitors in the markets directly affected by the settlement agreement's pro-competitive approach.

67. Alascom argues that competition will not increase technological innovation because Alascom has been a leader in employing new statellite technology in providing service to Alaska, particularly in the Alaskan bush. We do not challenge Alascom's observation that it has employed satellite technology in Alaska. However, only a very limited network had existed previously, while today a considerable network is in place. Our examination of the Alaskan market in its present stage of development indicates that the forces of competition, rather than the regulatory hand, will be more efficient in ensuring that future technology developments

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[8] The two percent figure is based on revenues. If based on traffic diversion, it would equate with an approximate 3.3 to 3.5 percent market share.

will be utilized by Alascom in serving Alaska. The finding that competition increases the likelihood and pace of technological innovation does not rest on a determination of either improper or inadequate action by the existing supplier. Rather, it relies on the incentives of the marketplace to insure that economic technological innovations are utilized in providing service.

68. Alascom also argues that the benefits of competition can be achieved in Alaska by limiting entry to the resale of its services. In its view, this will avoid the detrimental effects of entry on separate facilities. Alascom is wrong in its belief that all the benefits perceived to flow from an open entry policy can be achieved by resale. Resale will, to some degree, reduce noncost-based price discriminations among and between service categories. However, it may have little, if any, effect on the overall level of cost incurrence, on the rate of technological innovation, or on the elimination of waste. In fact, the possibility of entry via both resale and separately constructed facilities may produce the strongest incentives since efficient operation is encouraged by entry over separately constructed facilities while resale arbitrage will constrain a carrier to price services at or near cost. Thus, it clearly cannot be said that all of the possible benefits of entry are achievable through resale.

69. In the *Third Supplemental Notice* the Commission provided Alascom the opportunity to document the alleged detrimental effects flowing from a policy of open entry in the Alaskan MTS-WATS market. Unless such adverse effects can clearly be demonstrated by credible evidence, the benefits perceived and reasonably expected to flow from entry in the MTS-WATS market clearly dictate a finding that such entry is in the public interest. Accordingly, to make the public interest determination required by *FCC v. RCAC* it is necessary to evalute Alascom's arguments and economic model that allege that detrimental effects outweighing any foreseeable benefits will result from a policy of open entry. The following two sections evaluate Alascom's economic model and its other related arguments.

VII. Analysis of Alascom's Economic Model

A. *Methodology*

70. Alascom's model is presented in two major sections: 1) Estimates of Traffic Diversion and 2) Estimates of the Financial Impact on Alascom. Each section attempts to measure impact for First Phase First Competitive Entry and for Full Competitive Entry.[9] First Phase First Competi-

[9] In order to simplify model development, Alascom has assumed in each case that entrants achieve their full potential immediately. However, it recognizes that the projected impact will be attained only after an entrant has been in the market for some time. As we note later, this assumption significantly affects the interpretation of the model.

tive Entry assumes entry by a competitor whose network serves a limited area(s) in the contiguous states. Full Competitive Entry refers to an entrant who serves all metropolitan areas.

71. *FIRST PHASE FIRST COMPETITIVE ENTRY.* Alascom took SPCC as a typical first competitive entrant, assumed that SPCC would expand service to Seattle because of the high community of interest between Alaska and Seattle, and attempted to model the volume of telephone calls that could be made more cheaply using SPCC rather than Alascom.[10] A five percent sample was used to determine the 1979 volume of traffic between Anchorage, Fairbanks, and Juneau [hereinafter AFJ]—the markets in which Alascom believes competitive entry to be likely—and SPCC-served cities (including Seattle). Alascom segregated the calls by the AFJ telephone subscriber originating or terminating the calls. After linearly extrapolating SPCC's SPRINT tariff to estimate rates for the longer distances necessary to serve Alaska, the cost of the calls to Seattle and cities served by SPCC was recalculated at SPCC's projected rates. Alascom presented estimates of traffic diversion for three models containing subscribers who made more than twenty, ten, or three calls per month.[11] To account for northbound traffic diversion, Alascom assumed any northbound traffic terminating with a subscriber who could benefit by subscribing to an entrant's service for southbound calling would be diverted to the first phase entrant.[12] Using this methodology, Alascom's study estimated traffic diversion at 8.1 percent, 9.6 percent, and 11.2 percent of the total Alaskan interstate market[13] for the twenty, ten, and three call models, respectively.

72. *FULL COMPETITIVE ENTRY.* In order to estimate the traffic diversion that would result when competitive entrants served all major metropolitan areas, Alascom attempted to develop a factor that would reflect the relationship between the size of the initial entrant's limited market and the size of the potential market when the entrant had ex-

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[10] Alascom's assumption is that any time a service is offered more cheaply by a competitor, the customer will purchase the competitive service. If that were true, the specialized common carriers would carry a significant percentage of the contiguous states traffic. AT&T would only carry traffic between points not served by a specialized common carrier, where operator assistance is required, or where a customer had insufficient calling volume to justify incurring the recurring monthly charge. The contiguous states' experience does not indicate that diversions of that magnitude are likely to occur in the short run.

[11] At some points in the text, Alascom discussed the models in terms of more than twenty, ten to nineteen, three to nine calls per month. However, our textual characterization corresponds with the usage of the model results, and is accordingly used in describing the methodology.

[12] Alascom states that northbound calling constitutes forty percent of the traffic between Alaska and the contiguous states. It nowhere explains why it believes that northbound traffic terminating with subscribers who would benefit from subscribing to SPCC is a valid representation of the amount of northbound traffic that will be diverted as a result of competitive entry. It is not clear that this is a valid assumption.

[13] If the diversion estimates had been based on diversion of AFJ traffic, the range would have been approximately 13.5 to 18.6 percent.

panded to serve all major metropolitan areas. It then used this factor to extrapolate the first phase results to reflect the impact of full competitive entry.

73. Alascom developed its traffic-based multiplier by deriving the number of calls between AFJ and all metropolitan areas in the contiguous states, purportedly using traffic patterns between AFJ and the State of Washington to determine the ratio of metropolitan calls to total calls. It divided this metropolitan traffic figure by a proxy purportedly representing traffic to the metropolitan areas served by the first phase entrant. This yielded a factor of 4.42, which Alascom believed to be the additional traffic diversion multiple resulting from the expansion of the first phase entrant's network to serve all metropolitan areas in the contiguous states. Using the 4.42 multiplier, Alascom's study estimated traffic diversion at 35.6 percent, 42.3 percent, and 49.3 percent of the total Alaskan market[14] for the twenty, ten, and three call models, respectively.

74. Combining population data and traffic data, Alascom developed a second extrapolation factor as a check against the first. Alascom calculated the number of anticipated calls to metropolitan areas by multiplying total calls between Alaska and the contiguous states by the 1970 urban population ratio, which it weighted to reflect calling patterns. It then divided the number of metropolitan calls by the number of calls diverted to SPCC's limited network (including Seattle) yielding a population-based multiplier of 5.2.

75. In its rebuttal comments, Alascom calculated a second population-based multiplier, the ratio of total standard metropolitan statistical area (SMSA) population in the U.S. to the population of SPCC-served cities, including Seattle. This produced a 5.42 multiplier.

76. *FINANCIAL IMPACT ON ALASCOM.* Alascom used the estimate of traffic diversion based on the three call model to determine the financial impact of entry on Alascom under various scenarios.[15] The scenarios include alternatives such as the time frame, 1980 versus 1985, whether or not the entrant leases its facilities from Alascom or constructs separate facilities, and whether entry is First Phase First Competitive Entry or Full Competitive Entry. The financial impact was calculated in the following manner: (1) Alascom estimated its revenue requirement for the year in question, assuming no entry; (2) it compared this to its estimate of revenue received (including both billed revenue and revenue received through settlements) under the appropriate competitive model; and (3) it determined the consequent surplus or deficit of revenue (ad-

[14] If the diversion estimates had been based on diversion of AFJ traffic, the range would have been approximately 59.3 to 82.2 percent.

[15] Alascom used the three call model results despite stating that it was not sure of the reliability of the three call model and despite having developed data for both a ten call and a twenty call model.

justed for changes in settlements with exchange carriers). Thus, when Alascom speaks of deficits or shortfalls caused by entry, it is referring to the amount of revenue necessary to bring its actual rate of return up to the allowed rate of return, under an assumption that its costs, excluding exchange settlements, would not decrease despite having sustained some traffic diversion through competitive entry. Table 1 summarizes the impact Alascom claims its economic model shows. A more complete depiction of Alascom's alleged detrimental impact showings is contained in Appendix A.

77. Several parties have criticized the methodology and assumptions employed by Alascom in constructing its model. Major criticisms are set forth below.

78. MCI states that Alascom's assumption of the market share that competitive carriers would obtain is fatally flawed, in that it extrapolates the market share from the three major cities to all interstate traffic. It believes that Alascom's extrapolation is contraindicated by the experience in the rest of the United States where competition has simply served to stimulate demand, with no adverse consequences resulting from competition.

79. NTIA states that there are questionable assumptions and techniques used by Alascom which combine to raise considerable doubt about Alascom's estimate of the adverse impact of competition on Alascom and its customers. NTIA argues that the calculation of the break-even point

Table 1
Alascom's Estimates of the Impact of Competition

	Base Year 1980		*Fifth Year 1985*	
	Surplus (Deficit)	*Actual Return*	*Surplus (Deficit)*	*Actual Return*
	(million dollars)	*(percent)*	*(million dollars)*	*(percent)*
No Competition	$3.3	10.3%	$(14.3)	11.2%
First Phase				
1) Leasing	1.4	10.0	(18.8)	10.7
2) Separate Facilities	0.2	9.7	(20.6)	10.5
Full Competition				
1) Leasing				
1. a) at averaged rate of $2700			(34.1)	8.8
1. b. at deaveraged rate of $964			(39.7)	8.2
2) Separate Facilities			(42.2)	7.9
3) Separate Facilities and loss of state MTS			(51.6)	6.7

where a customer would gain by switching to SPCC assumes total parity in dialing convenience and service quality and an absence of inertia on the part of consumers. It states that some price differential will be necessary to overcome these factors. Therefore, NTIA asserts that Alascom has overstated the revenue and rate impact by its choice of assumptions. NTIA states that the penetration rate selected by Alascom is inconsistent with the one to two percent market share obtained by OCCs in the contiguous states. While it admits that some differences exist between the Alaska market and the contiguous states' market, it believes the penetration share is overstated. It also questions the use of a constant price level in Alascom's studies, observing that under rate integration the prices will fall in constant dollars even without competition. NTIA also questions the statistical validity of the three call models, the extrapolation of the results of the first phase entry studies to predict the Alaskan traffic that would be vulnerable to full competition to all metropolitan areas, the inconsistent use of data from the ten call model and the three call model, and apparently inconsistent assumptions regarding the scope of competition within the state of Alaska at various points within the model. NTIA recognizes that competition in Alaska may have a negative effect on Alascom's market share and rate of return. It also recognizes that competition will have its most significant impacts in the most densely populated areas of Alaska. However NTIA does not believe that Alascom's model has properly forecast a likely impact of competition and believes Alascom's estimates should be viewed as an upper limit on the market segment that may be lost.

80. SPCC argues that Alascom's economic study is flawed. The flaws are stated to be: the first competitor will compete fully in 1980; SPCC's rates were extended to incorporate the longer distances necessary to serve Alaska without cost support; the breakeven analysis utilized invalidates the three to nine call model; SPCC's tariff was improperly applied because one tenth rather than one half minute billings were utilized and the $.10 per call charge was not included; all customers are assumed to be able to access the SPRINT network; customers are assumed to subscribe for a full year even though distinct peaks in calling exist; highly questionable multipliers are used to extrapolate its results; the estimates of market share are unrealistic; and misleading references are made to a $19 million deficit in 1985 with the first competitor due to a change in the assumed rate of return from ten to thirteen percent. SPCC claims that these faulty assumptions make it impossible to determine the impact of competition on Alascom, and, in any event, tend to seriously overstate the impact that may be anticipated from competitive entry in the Alaskan MTS-WATS market. Finally, it argues that the efficiency of Alascom's network will not be harmed by the competition.

81. GCI asserts that Alascom's claims of economic harm and adverse consequences from MTS-WATS competition are not substantiated by its filings and economic model. It asserts that Alascom's model is a monopoly model which is designed to, and can only result in, some showing of impact if the monopoly carrier is not the only carrier in the market. It contends that the Commission has repeatedly rejected such monopoly models because, in addition to their predetermined impact showing, they fail to take into account several important factors in a competitive market, such as increased volumes through new services and innovations, the efficiencies of the new entrants' technology, and stimulation of the overall market by reason of the competition and services of new entrants. GCI cites the following alleged major erroneous assumptions, steps, or calculations, distorting dramatically Alascom's purported impact showing: a new entrant will immediately penetrate fully the Alaskan MTS-WATS market and capture as much as sixty percent of Alascom's traffic; new entrants by 1985 will service the entire MTS-WATS market in the lower 48 states (with no allowance for facility, equipment or financial constraints); and the use of improper population figures and calculations to achieve a multiplier, impact effect, and the use of unauthorized rate of return levels (thirteen percent rather than ten percent). Even if Alascom's "monopoly" model were to be corrected and used insofar as possible, GCI submits that Alascom can only show that its interstate revenues would be decreased by about thirteen percent in 1985, or significantly less than the estimated average annual growth of fifteen percent in the Alaskan submarket over the next three to five years (without any stimulus from competition).

B. *Model Analysis*

82. Alascom's presentation of its economic model lacks supporting documentation for many key assumptions. In several instances explanations of its methodology appear to contradict the numbers provided and the numerical calculations undertaken. These deficiencies undermine the credibility of the study.[16] *See, e.g.*, paragraph 100, *infra*.

83. The first phase traffic diversion estimates are based on unrealistic assumptions that almost invariably overstate the potential adverse im-

[16] Alascom argues that the scope of its study and its rebuttal comments were restricted by the limited amount of time allowed by the Commission for their preparation. It particularly believes that the two weeks notice of the time rebuttal comments would be due was uneasonable and that failure to discuss an issue raised by the reply comments should not be construed to be agreement. We do not believe Alascom was prejudiced in any way. First, it did not file a request to file rebuttal comments for more than five weeks after the reply comments were filed. Second, Alascom was seeking to file a complete, new study with an expanded data base and a revised methodology. The rebuttal phase of the proceeding is not the time to introduce completely new material of that scope.

pact of entry on Alascom's market share. The assumptions with regard to relative product quality and prices are particularly questionable. Furthermore, the extrapolation of first phase results to show the effect of full competition is riddled with logical errors which further exaggerate the projected impact of entry on Alascom. Alascom calculates the extrapolation factor or multiplier using three different methodologies, but all are defective. NTIA employs a more acceptable methodology and projects a far smaller impact than any of Alascom's estimates. In the process of translating the traffic diversion estimates into a financial impact statement, Alascom makes further unsupportable assumptions that act to overstate the financial impact of entry on Alascom. First, it does not allow for cost shifts other than exchange carrier settlements despite projecting significant traffic diversion. Second, the failure to consider the gradual accumulation of market penetration by the entrant significantly overstates the impact of entry in a growing market.

84. *FIRST PHASE FIRST COMPETITIVE ENTRY.* Alascom's first phase model assumes that any telephone subscriber who can save money by using a competitive service will do so. Thus, this analytical model assumes a parity of service quality and a lack of inertia on the part of customers and is very sensitive to the rates used in calculating the break-even point. We shall explore these considerations below.

85. Specailized carriers currently interconnect at nearly all exchange switches through termination on the lineside of the exchange switch.[17] The quality of this type of interconnection could be considered inferior by users for several reasons. The customers of the new service would need a touchtone phone or tone generator, and would have to dial approximately twice as many digits as the Alascom customer. Acquisition of a touchtone phone is not costless. Furthermore, experience indicates that customers of specialized common carriers services get busy signals and "bad connections" more frequently than do customers of the traditional telephone companies. While some types of smart terminal equipment may offset some of these factors for some larger enterprises, we believe that these factors cannot be totally discounted as a consideration in the break-even analysis.

86. In addition, due to customer loyalty or lack of information, a customer may not switch to a specialized common carrier (SCC) service if the price advantage of the SCC is slight. In order to make an intelligent choice among competing services with differing rate schedules, consum-

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[17] Alascom's entire analysis would be altered if trunk-side interconnections are provided to the specialized carriers. The competitor's quality of service presumably would be increased, although its cost of accessing the local exchange network would presumably increase as well to become equivalent to that incurred by Alascom. This upward shift in access costs would undoubtedly result in price increases by the specialized carriers, which would invalidate Alascom's analysis of the customers who would find it beneficial to switch to a competitive service.

ers must forecast the number of long distance call-minutes they will incur each month. The uncertainty associated with such forecasting will probably work to Alascom's advantage in the cases where the expected savings are slight or where calling patterns are irregular. One such circumstance is in Juneau, where the calling patterns have seasonal peaks due to the impact of the state legislative sessions.

87. Several of Alascom's assumptions about pricing are critically sensitive. Alascom linearly extrapolated a current SPCC tariff. Since the record contains no evidence to indicate how SPCC would expand its tariff, Alascom cannot be criticized for making this assumption. However, it is the assumption most favorable to Alascom's position. SPCC's comments raise doubts about whether it would use a linear extension in light of higher costs it would incur in extending its network to Alaska on separately constructed facilities. No sensitivity analysis showing how alternative price differentials would generate different levels of market penetration by the entrant was provided by Alascom.[18]

88. Alascom has not consider the implementation of complete rate integration between Alaska and the lower 48 states, scheduled for 1985, in any of its impact models, despite strenuously arguing that such rate integrations should continue. This integration will significantly reduce the price of MTS-WATS service to Alaska, thereby reducing the differential between Alascom's price and a competitor's price. Such a change has a significant impact on the break-even point calculated by Alascom and, thereby, on the estimates of traffic diversion. A similar effect may occur due to the implementation of an access charge for all carriers, or from the effects that may result from any changes in the separations manual. An entrant is likely to consider these potential pricing factors in determining whether to enter the market on separately constructed facilities. Where it believes these changes to be significant in its planning process, an entrant is much more likely to enter via resold facilities.

89. Alascom argues that it did not consider the effects of full rate integration due to become effective in 1985 because it assumed that AT&T would raise its rates to eliminate the spread by 1985. While this assumption could become true, it does not justify not presenting the effect on traffic diversion that would result from a rate reduction under existing circumstances in order to give the Commission an idea of the sensitivity that rate adjustments would have on the impact shown by Alascom's study. Moreover, if AT&T's rates increase to that extent, it is reasonable to assume that the competing carriers in Alaska would also raise their

[18] NTIA's comments suggest that a ten percent discount in price would raise the breakeven calling level from 76.9 minutes to 113.4 minutes per month, and for a twenty percent discount the breakeven point would rise to 187.5 minutes per month. These are significant shifts in the breakeven calling level, indicating the extreme sensitivity of the assumptions underlying breakeven analysis.

rates by an amount proportional to that by which AT&T raised its rates. This has the same effect as if AT&T kept its rates static and the reduction in Alascom's rates through the implementation of Phase III of rate integration went into effect. Therefore, we conclude that a failure to consider the effects of rate integration undermines the credibility of the 1985 results.

90. Alascom assumed that operator-assisted calls were subject to diversion by competitors much the same as direct dial calls. Alascom argued that the entrant's use of an authorization code eliminates the need for credit card, collect, and third number billing, such that these categories of operator-handled calls would be highly vulnerable to competition. Collect, third number, or person-to-person calls are desired features that frequently cannot be accomplished within the structure of a specialized carrier's service. Thus, this assumption worked to overstate the potential traffic diversion that would result from entry.

91. Alascom has contended that the assumptions it made in constructing its model were conservative ones. However, as the discussion in this section indicates, the assumptions selected almost invariably create the largest potential impact possible. This is done even where it is clear that the assumed circumstances will not occur. Given the deficiencies in the assumptions used by Alascom, the first phase traffic diversion estimates are unreliable and, at best, produce an exaggerated estimate of the potential worst case.

92. Alascom's three-call model estimates traffic diversion for a first phase entrant at 11.2 percent of all Alaskan traffic. If, as assumed by Alascom, the entrant's price would on average be 55 percent of Alascom's price, then the 11.2 percent diversion of traffic would imply at least a six percent share of total market revenue. This is more than three times the approximate two percent share that all specialized common carriers have achieved in the contiguous states telecommunications market in the roughly four years since *Execunet II*, *supra*. Nothing in the record, or in our evaluation of the market, leads to the conclusion that the Alaskan experience will be significantly different in the short run from the experience in the contiguous states.

93. Alascom argues that competition is in its infancy and that it was trying to develop a mature competitive model. While Alascom appears to have attempted to construct a mature first phase model, the fact that competition is in its infancy is a critical factor which Alascom's model does not incorporate. Since competition is in its infancy, new entrants are likely to achieve market penetration gradually rather than achieving a mature penetration rate immediately. Accordingly, we believe that the experienced contiguous states' diversion is a better short-run, first phase estimate than is Alascom's first phase model. This is not to say that we believe competitive entrants have achieved their maximum penetration.

Rather, the contiguous states' experience is a better guide to what may be expected in the short run. Future competitive penetration, if it occurs, will be gradual, allowing the facilities planning necessary to prevent uneconomic construction.

94. Alascom's argument that Alaskan telephone users are more aware of telephone alternatives due to media coverage of recent intrastate rate proceedings is not persuasive. In the contiguous states, mass advertising campaigns by the specialized carriers have raised the awareness of potential users. Furthermore, the contention that the higher interstate average length of haul in Alaska will lead to greater price differentials between competitors' services and Alascom's services than exists in the contiguous states' market does not support a diversion estimate of the magnitude projected by Alascom's study. The relative differential between the services of the various carriers is likely to be uniform over distance. Moreover, to the extent that "bad connections" may occur more frequently on an entrant's facilities, such connections are likely to affect the longer distance calls more than calls of a shorter distance due to the additional switching and amplification that occurs over longer distances.

95. *FULL COMPETITIVE ENTRY.* Since Alascom's full competitive model is an extrapolation of the first phase model, its full competition model suffers from all the deficiencies we have noted for the first phase model. Alascom has compounded these deficiencies in the process of developing its multiplier. The multiplier was intended to reflect the increased traffic diversion Alascom anticipated when the first phase entrant expanded its limited network to reach all major metropolitan areas in the contiguous states. Table 2 below sets forth the methodology Alascom used in developing its 4.42 traffic-based multiplier.

Table 2

Traffic—Based Competition Impact Factor

1. 10 Calls Model Msgs (68,009) − 10 Call Model (26,581) =
   (with Seattle) (without Seattle)
   SPCC Seattle Msgs (41,428)

2. Seattle Msgs (41,428) ÷ Washington State Msgs (124,407) =
   % Metropolitan (33%)

3. % Metropolitan (.33) × Total Conus Msgs (902,885) =
   CONUS Metropolitan
   (300,664)

Table 2
Traffic—Based Competition Impact Factor

4. Conus Metropolitan (300,664) ÷ 10 Call Model (68,009) =
(with Seattle)
Ratio to SPCC (4.42)

Source: Supplemental Comments of Alascom, Vol. II, Appendix 2, p. A6.

96. As conceived by Alascom, the traffic-based multiplier required it to estimate the share of contiguous states' traffic with AFJ that was to metropolitan areas, which represents the size of the market under full competition. Lacking data on calling to and from metropolitan areas in the contiguous states, Alascom used data from its ten-call model to develop a proxy for the share of total traffic that was metropolitan. Alascom used Seattle traffic diverted to SPCC as a proxy to represent metropolitan traffic, and Washington State traffic as a proxy to represent total traffic to and from Alaska. The result, 33 percent, was said to represent the percentage of traffic that was metropolitan. This percentage was applied to total messages between Alaska and the contiguous states to determine the number of messages between Alaska and the contiguous states' metropolitan areas. Alascom then divided the number of messages between Alaska and the contiguous states' metropolitan areas by the number of calls diverted to SPCC's service (including Seattle) which it believed was a proxy for the size of the first phase market.

97. Alascom's analysis appears to rely on two major assumptions. Alascom first assumes that traffic patterns between Alaska and the State of Washington are representative of traffic patterns between Alaska and the contiguous states. Alascom does not explain why it believes this assumption to be valid. In fact, its comments indicate that a high community of interest exists between Alaska and Seattle. In light of this, the assertion that traffic patterns between Alaska and the State of Washington would match those between Alaska and the contiguous states is questionable. The high community of interest would appear to inflate the model's estimate of calling between metroplitan areas, thereby increasing the traffic diversion Alascom's model would anticipate from expanding a first entrant(s) network to encompass all metropolitan areas.

98. Second, Alascom apparently believes that by using the ten-call model traffic diversion data for Seattle and for SPCC's current network (including Seattle) it has maintained a theoretical consistency between the proxies used to represent calling to metropolitan areas. The high community of interest referred to in the preceding paragraph also calls into question the reliability of diversion figures to SPCC's network as

representing metropolitan calling. This is particularly true when used as a proxy for the size of the first phase entrant(s) market. While the use of data reflecting diversion of Seattle traffic to SPCC's network in determining the percent metropolitan calling would understate the percentage of traffic considered metropolitan, the use of data reflecting diversion to SPCC's network (including Seattle) as the denominator in the final step would tend to offset the low percentage of metropolitan calling determined in the second step. However, it is impossible to determine whether the calculations exactly offset each other or whether some error is introduced through the use of these proxies. Therefore, there is considerable uncertainty about the reliability that may be attached to the assumptions underlying the traffic-based multiplier.

99. Alascom used data from the ten call model in calculating the 4.42 multiplier. It did this despite using the three call model to determine the financial impact. Alascom does not explain the reason for selecting the ten-call-model results. It also does not indicate whether the three and ten call models would be expected to have similar percentages of metropolitan calling. In fact, it would not be unreasonable to anticipate the ten call model would have a higher percentage of metropolitan calling than would the three call model due to the larger percentage of businesses that would be anticipated to be included in the ten call model. Therefore, it is very possible that Alascom's decision to use data from the ten call model works to overstate the estimated traffic diversion.

100. Alascom appears not to have always used the numbers generated in its study in determining the 4.42 multiplier. For example, in arriving at the estimate of SPCC's Alaskan/Seattle traffic, Alascom uses 68,009 as the ten call model estimate of messages diverted with Seattle included in SPCC's network. Table 6 on page 27 of Volume II shows the number to be 86,764. Alascom uses 26,581 as the ten call model estimate of messages diverted by SPCC's current network, without Seattle. Table 6A on page A49 of Volume II shows the number to be 31,570. Further, Alascom uses 124,407 calls for Alaska/Washington state messages although Alascom's comments indicate Alaska/Washington state messages to be 279,433 on page A7, Attachment 2 of Volume II. No explanation for the use of these divergent figures is contained in the record. If Alascom had used the numbers generated by its model a multiplier of 2.06 would have been produced. Because of the cited deficiencies, the traffic-based multiplier of 4.42 cannot be considered to measure reliably the increased traffic diverson under conditions of full competitive entry.[19]

[19] In its rebuttal comments Alascom observes that the reply comments had brought to its attention that "its multipliers contained logical errors which interfered with their usefulness." *Rebuttal Comments*, p. 34.

101. Careful review of the methodology leading to the 5.2 population-based multiplier, which we present in condensed form in Table 3 below, shows that the actual calculations do not relate the size of the first phase market to the size of the mature market, which Alascom was trying to measure. Alascom calculates the ratio of contiguous states' metropolitan traffic with Alaska to SPCC's estimated share of total traffic between Alaska and the cities served by SPCC, including Seattle, as reflected by the three-call model. In the current context, this ratio has no apparent relevance, reflecting only that the total market is 5.2 times larger than the estimated first phase traffic diversion reflected by the three call model. This methodology of calculating a multiplier therefore does not corroborate the 4.42 traffic based multiplier.

Table 3
Population Based Multiplier

1. % Metropolitan (urban ratio) = 58%

2. % Metro (.58) × Total Conus Msgs. (902,885) =
Conus Metropolitan (523,673)

3. Conus Metro (523,673) ÷ 3 Call Model Msgs (100,753) =
(with Seattle)
Ratio to 1st Entrant (5.2)

Source: Supplemental Comments of Alascom, Vol II, Appendix 2, p A 7.

102. While the previous two methods for calculating a multiplier were criticized in several parties' reply comments, Alascom did not attempt to address the particulars of any of the criticisms of its methods. Rather, it set forth a third method for calculating a multiplier. Alascom simply calculates the ratio of total SMSA population in the U.S. to the population of SPCC-served cities and presents this ratio (5.42) as the multiplier.

103. Thus, it can be seen that Alascom attempts to develop a multiplier by using SMSA data in the numerator while using data reflecting the size of the cities served by SPCC in the denominator. This works to produce a larger multiplier because in entering a particular SMSA, a carrier will serve those segments initially that offer the highest volume of business, presumably the central city areas where businesses are concentrated. Expansion to serve the remainder of an SMSA is unlikely to provide the same growth characteristics as would expansion to a new SMSA. Moreover, as Alascom noted in its rebuttal comments, the use of cities served does not reflect the existence of extended area service which would expand the service capability of an entrant. The more conservative ap-

proach would be to utilize consistent data in both the numerator and the denominator.

104. Consistently employing SMSA data, NTIA calculated a population-based multiplier and found it to be 2.2. This was calculated by taking the population of all SMSAs (158 million) and dividing this by the SMSA population of SPCC-served areas (71.4 million). This method does not allow for population weighting to reflect concentrated calling patterns between specified communities of interest. NTIA's methodology is a simplified and rough estimation procedure, which we believe provides a closer approximation of the additional traffic diversion that may result from network expansion than do any of Alascom's methods.

105. It is unquestionable that as competitors expand their networks to include more metropolitan areas, the percent of the total Alaskan MTS-WATS traffic diverted will increase. No party has controverted this proposition. However, Alascom's methodologies for developing a multiplier are defective, and there appears to be no rational basis for believing that the multipliers presented indicate the increased traffic diversion to be anticipated from a specialized carrier's network expansion. Accordingly, little weight can be attached to the traffic diversion estimates resulting from Alascom's use of the 4.42 multiplier.

106. *FINANCIAL IMPACT ON ALASCOM.* Alascom's financial impact model is flawed for reasons over and above the ramifications of the flaws that we have already documented in the traffic diversion estimates. Despite estimates of traffic diversion by competitors of up to 49.3 percent of Alascom's interstate market, Alascom assumes that total costs are unaffected. The constant total cost assumption can be seen from the fact that when Alascom compares its revenue requirement before and after entry, the only difference in the revenue requirement in the case of entry is a reduction due to reduced settlements paid by Alascom to the local companies. Since the revenue requirement is an amount necessary to cover all costs, including a fair return on investment, the direct implication is that total costs are assumed constant despite projections of significant loss of market share. While in the short run costs may be unaffected, in the long run, or given significant usage changes, costs will change to reflect usage conditions. The failure to allow for such cost reductions causes Alascom's model to overstate the detrimental financial impact of entry on Alascom and is particularly significant because Alascom argues that it was developing mature models which should reflect long run conditions.

107. A second assumption that critically affects the interpretation of the model is that a mature penetration rate will be achieved instantaneously in both the first phase and full competition models. While Alascom has noted that a competitive entrant would achieve a mature penetration rate only after operating in the market for some time, the failure to account for

that factor grossly distorts the potential effects of entry. Alascom estimates that the year to year growth in demand from 1981 to 1985 for interstate calling for Anchorage, Fairbanks, and Juneau ranges from 10.9 to 11.9 percent, 15.5 to 17.0 percent, and 13.0 to 14.1 percent, respectively, assuming no competitive entry. It is therefore apparent that unless there is a traffic diversion greater than these growth rates, the most significant effect will be a reduction in the rate of growth Alascom will experience. While a mature model provides information concerning the potential share of the market that a new entrant may capture in the long run, the actual penetration that can be anticipated in the initial year or two and the time it will take to achieve a mature penetration are more relevant in determining the dynamics resulting from the introduction of competition.

108. The most relevant evidence relating to the initial penetration that may be anticipated is provided by the contiguous states' experience of the existing competitive carriers. As we have noted earlier, the contiguous states' competitive carriers in the approximate four years since *Execunet II*, *supra*, have achieved approximately a two percent share of the market—as measured by revenues—which translates to a 3.3 to 3.5 percent volume share because of the discounted rates charged by the competitive carriers. The projected growth rates for Alaska are more than three times the contiguous states' experience. There, therefore, appears to be little reason to anticipate an initial penetration greater than the estimated growth rate. Alascom will have to adjust its construction program. However, facilities currently used should not become idle because of traffic diversion to an entrant. Even if the worst case happens and some facilities did become unused because of traffic diversion, such a phenomenon would be of short duration. The record in this proceeding does not establish that a reduction in Alascom's growth rate would produce consequences adversely affecting the public interest and thus does not require the establishment of a monopoly supply policy for Alaska.

109. Alascom contends that the traffic diversion resulting from competitive entry will result in a shift of costs to the intrastate jurisdiction. This, Alascom argues, will occur because the separations manual uses equivalent circuit miles[20] in assigning satellite facility costs between interstate

[20] Equivalent circuit miles is a concept used in Section 23.54, *et. seq.* of the Separations Manual. It is used to allocate interexchange facilities used for interstate and intrastate MTS, WATS and private line services between federal and state jurisdictions. Its significance in Alaska is that satellite facilities comprise the majority of interexchange transmission facilities. The number of equivalent circuit miles, for satellites, is the summation of the route by route product of the number of circuits times the airline miles between earth stations. Thus, a circuit between earth stations 2000 miles apart is assigned twice the circuit miles that a circuit between earth stations 1000 miles apart is assigned. Since a significant percentage of the satellite circuits run to the contiguous states and since these circuits have large equivalent circuit mile values due to the long distances between earth statons, the use of equivalent circuit miles results in the assignment of a significant proportion of the interexchange facility costs to the interstate jurisdiction.

and intrastate jurisdictions. This additional assignment of cost to the intrastate jurisdiction will, according to Alascom, force it to raise intrastate rates, thereby exacerbating the already high toll rate disparity.[21]

110. Alascom's study methodologies and assumptions have seriously overstated the diversion to be anticipated and have created the appearance of significant revenue shifts to the intrastate jurisdiction. If one applies the findings of the preceding paragraphs to the model, a considerably different perspective surfaces.

111. Whenever an existing rate structure is revised to a significant degree, usage patterns are likely to be affected. Since the Separations Manual assigns costs in significant part based on usage factors, such a shift is likely to result in some allocational shifting of costs between jurisdictions. This results because the growth rate on routes subject to competition will decline while the growth rate on unaffected routes will remain the same. This shift in relative growth may cause a slight increase in the percentage of costs assigned to intrastate services.

112. While it cannot be said that absolutely no shift of costs to the intrastate jurisdiction will occur, it can certainly be concluded that such shifts will be small, if they occur, and will occur gradually over time. This result can be anticipated because we believe that the interstate circuits in Alascom's network will continue to grow, albeit at a slower rate. Alascom's circuits from AFJ to other Alaskan points will also continue to expand. The relative differential between these growth rates and the relationship between the distance between earth station points all affect the allocation procedures. The exact mix of these factors cannot be precisely estimated, but the continued growth of the interstate circuits will work to substantially mitigate any adverse effects.

113. Assuming that a small shift of cost to the intrastate jurisdiction occurs, a significant change on the toll rate disparity should not occur. Additional facilities on physically intrastate routes will be built only if the combined interstate and intrastate demand justifies the additional facilities. Many of these routes are extremely low density routes. Thus, if Alascom's economy of scale argument has any validity it must be in connection with these low density routes where increased demand should reduce the average facility cost per circuit and thereby relieve upward rate pressure to some extent.

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[21] The toll rate disparity is stated by Alascom to be the ratio reflecting the difference between intrastate and interstate rates. This ratio is calculated by subtracting intrastate revenues at interstate rates from intrastate revenues calculated at intrastate rates and dividing the difference by intrastate revenues at interstate rates. For 1977, Alascom shows Mississippi with the highest disparity in the contiguous states at approximately 37 percent. using 1978 data for Alaska, Alascom states the disparity to be approximately 51 percent for Step 2 integrated rates and approximately 66 pecent for Step 3 integrated rates.

114. Alascom contends that in a competitive environment it would be forced to deaverage its private line rates,[22] thereby almost doubling private line rates to the bush. It states that while the provision of MTS-WATS equivalent services over resold private lines would not shift significant amounts from the interstate to the intrastate jurisdiction, payment from the interstate revenue pool for MTS-WATS generate more settlement payments for Alascom than Alascom would be able to charge through private line rates established in a competitive environment. In Alascom's view, this results because its interstate private line services are not part of the interstate private line pool, and thus, it must recover all of its private line costs from private line rates.

115. In analyzing the separations and settlements impact of competition on Alaska it is necessary to consider whether Alascom is facing competition only from competitors leasing Alascom's facilities, or whether it is facing competition from competitors providing separately constructed facilities. Where Alascom is facing only resale competition, a shift of interstate traffic from MTS-WATS or private line to a resale carrier will not significantly affect the allocation of interexchange facilities to the interstate jurisdiction.[23] Moreover, when facing only resale competition, it is highly unlikely that Alascom will be pressured to deaverage its private line rates. Thus, in this environment, no detrimental effects are discernable from the adoption of an open entry policy.

116. Our assumption in the *Third Supplemental Notice* that entry would be on facilities leased from Alascom was a more constricting assumption on the analysis than was warranted. GCI has been authorized to provide service to AFJ over separate facilities. Accordingly, we must analyze the competitive effects of entry on the need to deaverage private line rates in an environment where competition exists over separately constructed facilities. However, we continue to believe that a significant portion of any competitive entry in the MTS-WATS market in Alaska is likely to be through the resale of Alascom's facilities.

117. Alascom may desire to deaverage its private line rates since separations assigns costs to the private line category on the basis of average cost, while a competitive carrier could price its service in accordance with the costs associated with the routes in question. Alascom suggests that it would be required to reduce its interstate private line rate from $2700 per

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[22] In a strict sense, it is not MTS-WATS entry that creates the incentive for Alascom to deaverage its private line rates. Rather, it is the existence of a competitor offering private line service over separately constructed facilities. Such an entry possibility was clearly recognized in Domsat III. However, because the potential to offer both private line and MTS-WATS like services may make entry over separately constructed facilities more feasible, we consider the impacts herein.

[23] There will be no impact assuming that the resale carrier operates at the same efficiency as Alascom. To the extent that the resale carrier achieves more efficient operation, the allocation to the interstate jurisdiction may be reduced slightly. However, the more efficient utilization of the given resource is a competitive benefit.

month to $964 per month. There is scant record evidence to support a reduction of this magnitude. It is highly unlikely that an established carrier facing initial competitive entry would choose to deaverage its rates to this extent. Accordingly, little weight can be attached to the projectons made on the $964 rate.

118. Alascom appears to have failed to recognize the traffic and revenue shifts that would result under its assumption that private line rates would be deaveraged in the face of competitive entry over separately constructed facilities. Alascom assumes that 50 percent of the private line use to the bush will be lost because of increased rates for private line users in the bush. From this, Alascom concludes that there will be significant revenue losses from deaveraging rates. However, the private line users in the bush presumably had a reason for utilizing private line telecommunications. While they may discontinue private line service because of the increased price, a significant percentage of these calls would shift to either the MTS or WATS service of Alascom thereby increasing the revenues from those services. This would also serve to continue the assignment of many of these facility costs to the interstate jurisdiction, which, in the MTS-WATS service area, would be recoverable from the interstate pool. Alascom's failure to recognize this shift seriously overstates the impact that competitive entry over separately constructed facilities would have on telecommunications service in Alaska.

119. As the preceding discussion has demonstrated, the projected growth rates for Alaskan telecommunication service are a significant factor in evaluating the potential effects of competitive entry. Equally significant in the evaluation process is the recognition that entrants will achieve market penetration gradually. Alascom's failure to properly consider the interrelationship of these two factors in constructing its economic model seriously undermines any conclusion it attempts to draw from the model. Accordingly, it must be concluded that any detrimental effects alleged by Alascom have not been sufficiently documented. Moreover, the above analysis suggests that the effects will be nonexistent or insignificant. We must conclude that the overall cost of telecommunication service to Alaska will not be increased in any significant way, nor can it be projected that additional support from the interstate MTS-WATS settlements pool will be necessary as a result of new entry.

120. For the 1985 financial impact model, Alascom raises the allowed rate of return from ten percent to thirteen percent and calculates deficits on that basis. To isolate the impact of entry, the rate of return adjustment should have been omitted from the analysis.[24] If no entry is assumed for 1985, Alascom's model shows a fourteen million dollar deficit. Presum-

[24] This is only to isolate the effect of entry. It in no way attempts to determine what an appropriate rate of return will be in 1985.

ably, this represents the effect of the rate of return change; yet, when discussing the financial impact resulting from competitive entry, Alascom does not adjust the numbers to reflect this fact. Its inclusion serves only to create the appearance that the impact of full competitive entry will be greater than it actually would be.

121. Alascom's own estimates show the financial impact to be far less than crippling for the model's first phase of entry. For example, if the entrant leases its facilities from Alascom, competition is expected to reduce Alascom's revenue in 1980 by $5.2 million (2.5 percent of total company revenue). If the entrant does not lease its facilities from Alascom, competition is expected to reduce Alascom's revenue by $6.5 million (3.2 percent of total company revenue). Yet these numbers represent a worst case scenario. The analysis assumes traffic diversion of 11.2 percent, which implies a revenue diversion which is several times larger than that experienced in the contiguous states, and does not allow for any reduction in revenue requirements beyond settlements with exchange carriers. Furthermore, since Alascom's facility growth rate is larger than a reasonable estimate of anticipated traffic diversion, most, if not all, of this loss will appear as a reduction in Alascom's rate of growth, rather than any absolute loss.

VIII. Analysis of Alascom's Other Detrimental Effect Arguments

A. *Detriments of Intrastate Competition*

122. Alascom assumes that if the Commission adopts an open entry policy for interstate MTS-WATS, Alaska will be forced to permit intrastate competition. It contends that this will result in significant shortfalls in meeting state revenue requirements, leading to state rate increases. Although the FCC cannot control intrastate rates, Alascom argues that the Commission must take into account the effects that will occur from intrastate competition in determining whether to allow interstate competitive entry.

123. While we believe that the intrastate study suffers from many of the same deficiencies from which the interstate study suffers we need not resolve the question of intrastate competitive entry and its effects. This is the responsibility of the Public Utility Commission of the State of Alaska, as long as the state Commission does not adopt a policy that frustrates or interferes with a policy of this Commission. Presumably, in exercising its statutory responsibilities, it will undertake to determine whether competitive entry in the Alaskan intrastate MTS-WATS market will be beneficial to the public. If it determines that the adverse impact alleged by Alascom in the intrastate market does exist, it will presumably deny competitive entry. On the other hand, if it determines that competitive entry will be in the public interest, it will authorize such entry. In either

case, for purposes of this Commission's analysis, any detrimental effects of intrastate entry, even if they existed, would not be mandated by this decision and should not be considered in evaluating the question of interstate entry.

B. *Inefficiencies in Trunking and Network Management*

124. Alascom contends that the effect of competitive entry is to reduce the trunking efficiency obtained by concentrated traffic loading. It states that a single entrant serving all metropolitan areas in the contiguous states will lead to the use of close to 4½ percent more facilities to carry equivalent traffic in the first year of full competitive entry. As more carriers enter the market, increased losses in efficiency assertedly will occur because of the increased fragmentation of the market. Furthermore, Alascom contends that open entry will interfere with the centralized network planning necessary for an efficient statewide satellite network, with adequate provision for essential civilian and defense communications, including an appropriate redundancy factor.

125. Alascom considerably overstates the significance of trunking inefficiencies and network management problems that will arise from competitive entry. Its model is based upon trunking measurements that assume existing demand, pricing, technological utilziation and other characteristics associated with sole source supply of telecommunications services. Network planning in a competitive environment requires consideration of additional demand, facility, and pricing elements. It is through such processes that the competitive marketplace introduces the incentives that lead to efficient resource allocation and rational pricing decisions. We believe that competitive entry will produce demand, supply, technological, and service quality differentials which, in the long run, will provide for greater overall facility utilization and greater customer choice over price and service quality which will significantly offset any initial inefficiencies that may result from entry.

126. Alascom contends that entrants will offer a high blockage service that relies on Alascom, as the carrier of last resort, to provide facilities to meet entrant's excess peak load demands, to accommodate service outages on entrant's facilities, and to provide for the eventuality that an entrant may exit the market. It is not clear that Alascom will provide any more redundancy, as it has suggested. It seems very unlikely that Alascom would provide additional facilities to meet occasional short-term service outages that may be experienced by competitive carriers. Nothing in our experience would indicate that serious long-term outages of entrant's facilities are likely or that an entrant would not provide some backup option to meet such uncertainties. Moreover, in a competitive environment, a firm would be very unlikely to provide capacity in response to some uncertain possibility that a competitor will exit the

market. Thus, we would not expect Alascom to provide facilities in anticipation of these eventualities. A competitive marketplace should provide a better assessment of the amount of redundancy that is desired than can be obtained through the regulatory process. To the extent that Alascom's argument may be valid, entry on facilities other than Alascom's will provide some redundant telecommunications capacity, in the event Alascom's facilities suffer an outage. This will minimize the redundancy that Alascom would need to provide and should increase the overall efficiency of the telecommunications system.

127. The amount of redundancy necessary at the end of the line may be significantly less than the redundancy necessary in the core network because any fringe area outage involves a substantially smaller number of individuals, with consequent diminished economic impact. Where a particular customer desires a level of redundancy to meet specific security or emergency considerations beyond that which the network as a whole provides, such redundancy may be purchased by that entity, rather than placing the burden on telecommunications users in general. Additionally, where satellite circuits are involved, additional circuits may be activated with minimal delay.

C. *Analysis of Economy of Scale Argument*

128. Alascom claims that competition will result in a wasteful duplication of facilities because additional entry will deprive Alascom of economies of scale[25] that exist in the Alaskan market. In support of this contention, Alascom submitted two charts depicting the cost per circuit at various levels of circuit activation for satellite and microwave facilities that purport to show that economies of scale exist to that level. Alascom then attempts to show, using 1979 facilities data, that the economies of scale for Alaskan interstate traffic have not been exhausted.

129. The analysis presented by Alascom does not prove that untapped economies of scale exist in every portion of the Alaskan telecommunications market. The undocumented charts appear to indicate that, given the state of technological development, economies of scale exist at low levels of facility utilization. However, they are not particularly helpful in determining whether, or where, economies of scale might exist in the Alaskan telecommunications market. The critical question of the point at which the benefits of economies of scale are less than the benefits of competitive entry cited in Section VI has not been addressed by Alascom beyond arguing that the crossover point, wherever it is, has not yet been reached.

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[25] The term economies of scale relates to reductions in average unit costs with increases in output using the lowest cost technology. However, Alascom is actually looking at changes in average cost at changing levels of output given the level of certain facilities currently in use. Although we question whether or not this depicts true economies of scale, we adopt Alascom's characterization for purposes of this order.

130. The first step in properly analyzing the economy of scale question is to determine the relevant factors to be analyzed. Alascom uses interstate circuits as the relevant market for determining whether economies of scale exist. However, from the standpoint of facility utilization, the entire intercity market must be analyzed to determine whether untapped economies of scale exist. Most of the facilities in Alaska, be they satellite earth stations or terrestrial microwave facilities, provide both interstate and intrastate telecommunications service. Therefore, an analysis that attempts to look only at interstate circuits omits significant facility utilization from consideration. The omission of a portion of the facility utilization is a major analytical flaw that totally undermines any conclusions drawn from the analysis.

131. A second deficiency in Alascom's analysis is that it purports to show that significant economies of scale exist through the utilization of 2,000 voice grade circuits for both satellite and microwave facilities. However, a careful analysis of the charts indicates that significant economies of scale are exhausted at utilization levels well below the 2,000 voice grade circuit level depicted in the chart. The analysis of earth station economies using the 2000 voice grade circuit base indicates that more than 90 percent of the economies are exhausted at only 500 circuits and more than 95 percent are exhausted at a utilization level of 1000 circuits. The analysis of microwave economies using Alascom's data indicates that approximately 95% of the economies will be achieved at the 1000 voice grade circuit utilization level.[26] Although Alascom has not provided data that includes intrastate facility utilization, private line utilization, or television transmission utilization, a review of other Alascom filings suggests that circuit utilization approaches or exceeds the level at which the majority of the economies of scale are exhausted for Anchorage, Fairbanks and Juneau.

132. The achieved economies on terrestial microwave facilities are the most difficult to ascertain given the deficiencies in the record. However, even if fewer economies are achieved here than have been achieved in connection with earth stations, that factor should not be given undue weight. The prevailing technology for telecommunications services in Alaska is that associated with satellite communications. It is the economies associated with this newer technology that must be given the greatest weight in reaching a determination of what is in the public interest.

133. The Alaskan telecommunications market has been, and we believe will continue to be, a growing market. Regulatory policy must take cognizance of the dynamic factors existing in the marketplace. It should not be based solely on static conditions existing today. The fact that it may

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[26] See also Leonard Waverman, "The Regulation of Intercity Telecommunications," in *Promoting Competition in Regulated Markets*, Almarin Phillips, editor, 1975, for evidence that significant economies are exhausted at 1000 voice grade circuits on terrestrial microwave facilities.

be demonstrated that some minor economies of scale can yet be achieved given current utilization is not controlling in a proper analysis.[27] Any competitive entrant will achieve a market share gradually over a period of time, as Alascom has recongized. Thus, to await the time when it can unequivocally be demonstrated that no additional economies of scale can be achieved would only mean that the public would unnecessarily be derived of the dynamic advantages of a competitive market. Given the existing utilization and the anticipated growth we do not believe that Alascom has demonstrated that significant untapped economies of scale exist at the three cities competitors are initially likely to enter.

134. Alascom's economy of scale argument actually undermines Alascom's arguments concerning wasteful entry. If economies of scale exist at the appropriate levels of output, the principal carrier will probably be able to underprice any competitive entrant. Therefore, a competitive entrant would be unlikely to enter using its own facilities. This supports the Commission's belief, as stated in the *Third Supplemental Notice*, that competitive entry would be likely to occur on a resale basis. If more than one competitive entrant seeks to enter the market, an entrant will be more likely to resell Alascom's facilities since each entrant would be seeking to obtain business from the same group of potential customers. The entry of a competitor through the resale of Alascom's facilities does not affect the achievement of any remaining economies of scale.

135. Entry to the bush communities or to other smaller communities through separate facilities is extremely unlikely absent a significant technological improvement that considerably alters cost considerations. Alascom's comments indicate that it believes only AFJ are susceptible to competitive entry over separate facilities. Any competitive entrant seeking to provide service to communities other than the three principal cities should find it economically beneficial to provide service through the resale of Alascom's facilities, particularly if averaged rates are used by Alascom. Thus, any growth that occurs in telecommunications services to these communities will presumably be over Alascom's facilities.

136. Alascom contends that duplicative facilities should not be built because it has the capacity to provide service for thirty years through the addition of only channel equipment. As Alascom has conceded, the question of whether the existing carrier can provide the facilities is not the

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[27] The public interest determination for entry on separately constructed facilities is not of necessity controlled by whether all economies of scale have been achieved. There may be instances where, on a particularized showing, it can be shown that the public interest would be served by entry on separately constructed facilities on low-density routes, e.g., where a carrier seeks to round out its service area, or for operational reasons, might not find resale to be a suitable means. Moreover, the economy of scale argument, as stated by Alascom, only addresses the facility question. It ignores all other operational aspects of a business enterprise. Alascom's analysis is also based on the existing embedded technology. It fails to consider possible future technological developments that could significantly shift the cost parameters for providing service.

ultimate test in determining whether additional entry should be authorized. *Washington Utilities and Transportation Comm. v. FCC, supra.* While the capacity of equipment may at times dictate the purchase of equipment that results in excess capacity existing in the network, the possibility or reality of competitive entry may more effectively constrain the dominant carrier's acquisition of facilities than can regulatory oversight alone. The fact that several entities have sought authorization to provide service to Alaska indicates that these entities believe that such competition is feasible. The record in this proceeding has not established that such entry would be infeasible or destuctive.

D. *Impact on Exchange Rates*

137. Alascom contends that unless the Commission orders competitive carriers to pay local access charges equivalent to that which exchange carriers receive from MTS-WATS settlements, exchange carriers will be required to raise exchange rates to compensate for a loss in settlements. Alascom is incorrect in claiming that local exchange rates will have to be increased if entry is authorized. Under separations procedures, minutes of use by competitive entrants are interstate minutes and have resulted in the assignment of costs to the interstate jurisdiction. The costs of exchange access for competitive carriers are not recovered from the interstate settlements pool. Rather, competitive carriers pay the exchange carrier for accessing the local exchange network.

138. The Commission has aproved exchange excess rates[28] to be charged specialized common carriers by AT&T and GTE. *Exchange Network Facilities,* 71 FCC 2d 440 (1979). In that decision, the Commission indicated that other carriers could concur in these ENFIA rates, or could file separate tariffs for exchange access, as long as any such rates were properly cost-justified. Since no exchange carrier in Alaska has indicated which approach it will follow, it is not possible to determine what the access costs of a competitive entrant will be. In Phase I of this proceeding, the Commission is addressing the question of appropriate access charges. When the Commission prescribes access charges a policy of open entry in the Alaskan MTS-WATS market will not have an adverse impact on exchange rates since these charges will recover the interstate revenue requirement.

139. In setting rates, a jurisdiction may consider only those costs and revenues subject to its jurisdiction. The U.S. Supreme Court recognized this in *Smyth v. Ames,* 169 U.S. 466, 541 (1898), when it stated:

> The state cannot justify unreasonably low rates for domestic transportation considered alone, upon the ground that the carrier is earning large profits on its interstate

[28] The Commission extended the initial agreement on April 14, 1982 for a maximum period of an additional two years. *Extension of ENFIA Agreement,* 90 FCC 2d 6 (1982).

> business over which, so far as rates are concerned, the state has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business.

Thus, if an access charge for a competitive entrant would be less than the settlement received from MTS-WATS usage the exchange carrier would not be able to increase local exchange rates to make up for a shortfall in interstate revenues.

E. *Deaveraged Rates in a Competitive Environment*

140. Alascom challenges the Commission's conclusion in the *Third Supplemental Notice* that since Alascom accepted the rate integration policy as a Section 214(c) condition on its authorization, it is bound by that condition unless it is waived. It also challenges the finding that the Commission could not envision circumstances that would induce it to grant such a waiver, arguing that the Commission cannot prohibit Alascom perpetually from deaveraging its rates in the face of competition. It states that its acceptance of integrated rates was based on the Commission's other holdings in *Domsat III*, including the sole-source policy for MTS-WATS, and the special showings policy for private line.

141. Alascom's concern regarding the Commission's statement that it did not foresee circumstances in which rate deaveraging would be permitted gives undue emphasis to the Commission's statement in the *Third Supplemental Notice*. That statement was directed at the MTS-WATS rates which are subject to the Commission's rate integration policy for rates to Alaska, Hawaii, and other offshore points. The *Third Supplemental Notice* found that the rate deaveraging in the contiguous states for MTS-WATS services was unlikely at that time. Therefore, the Commission believed that it would be unlikely that it would find the public interest to be served if it allowed selective deaveraging of MTS-WATS rates to Alaska. Nothing in that section went so far as to propose that Alascom could not file tariff changes when it thought such filings were necessary, as Alascom has argued it did, nor did it seek to necessarily limit Alascom's discretion in determining rate structures.

142. Alascom contends that if the rate integration policy was based on a desire to prevent rate discrimination, an order should be issued requiring it to be included in the interstate private line pool. However, the policies applicable to MTS-WATS rates are not equally applicable to private line rates. Commission policy recognizes the possibility of the need in a competitive environment to deaverage private line rates. In the *Specialized Common Carrier decision, supra*, the Commission indicated that it did not find deaveraged private line rates to be contrary to the public interest where such rates reflected differentials in service costs and where such deaveraged tariffs are properly justified by adequate cost

support material. Nothing in the record suggests that cost justified, deaveraged private line rates would be contrary to the public interest in connection with interstate private line service in Alaska.

F. *AT&T/Justice Department Consent Decree*

143. Alascom has petitioned the Commission to seek additional information to evaluate the direct and indirect effects that it believes will flow from the entry of the consent decree agreed to by AT&T and the Justice Department. It contends that the implementation of the consent decree could adversely affect Alaskan telecommunications service by depriving Alaskan ratepayers of the subsidy provided by the existing separations/settlements procedures and could result in substantial rate deaveraging that would increase the cost of telecommunications service to Alaskan ratepayers. As evidence of this, Alascom cites a tentative Common Carrier Bureau analysis of the consent decree which indicated that the consent decree could impact the present rate integration procedures for Alaska.

144. Alascom is not directly subject to the courts' decree in the antitrust proceeding, as it has noted. Alascom's concerns relate to possible changes in separations, settlements, or tariffing procedures that may be necessitated or occasioned through the implementation of the court's decree. While the consent decree will necessitate changes in settlements and tariffing procedures for BOCs, and may do so for Alascom as well, the appropriate place to address any such changes is in conjunction with the specific proceeding looking at the specific change. That would also be the appropriate time to evaluate the effect of the change on telecommunications service to Alaska as well as any procedures or mechanisms to ensure that telecommunications service to Alaska will continue to be provided on terms and conditions that are consistent with the public interest.

145. Alascom's reliance on the Common Carrier Bureau's preliminary analysis of the consent decree is misplaced.[29] That analysis only indicated that under some implementation options it would be necessary to consider the effects it would have upon existing mechanisms involved in settlements and tariff structure for Alaska. While the preliminary analysis did indicate that some implementation scenarios could result in some degree of rate deaveraging, it did not conclude that such deaveraging was inevitable. In fact, under a variety of tariff structuring options, the continued use of highly averaged rates would seem to be highly likely for some period of time. While the consent decree may create some new incentives for deaveraging rates that did not exist at the time of the *Third Supplemental Notice*, we concluded therein that the record did not indicate that

[29] We note that this was a preliminary, internal staff memo and as such does not reflect official Commission policy.

deaveraged rates would necessarily be contrary to the public interest. The record with respect to the Alaskan portion of the inquiry also fails to show that some degree of deaveraged rates would necessarily be contrary to the public interest.

146. In light of the foregoing, we conclude that none of the assertions of Alascom affect whether competitive entry should be allowed in the MTS-WATS market. Accordingly, Alascom's request that the Commission seek comment on the direct or indirect effects of the consent decree is rejected.

147. In a similar vein, Alascom has argued that several proposed changes to the Separations Manual affecting interexchange plant and expenses, *e.g.*, the allocation of satellite earth station costs based on circuits rather than circuit miles, would adversely affect telecommunications service to Alaska. It argues that the Commission should consider these possible future changes in determining whether to allow competitive entry in the MTS-WATS market. Alascom's contention is not well taken. It will have an opportunity at the time any such changes are proposed to comment on the effects and the Commission will be able at that time to make an appropriate decision to ensure that the public interest will be served by any changes that may be made to the Separations Manual.[30] Alascom's raising of this subject seems to obfuscate the real issues in this proceeding and could be viewed as an effort to delay the adoption of any policy authorizing open entry.

G. *Analysis of Unique Conditions in Alaska*

148. Alascom argues that several factors make the provision of telecommunications service to Alaska unique and require that the Commission establish a sole source basis of supply for Alaska. Among these factors are the vast size of the State, the rugged terrain, the harsh climate, the thin and unevenly distributed population, and the unique demographic makeup of the State. Additionally, Alascom notes that many bush communities are accessible only by air, making these communities more dependent on telecommunications. It was these factors, Alascom alleges, that led the Federal Government to intervene in telecommunications in Alaska to counteract marketplace failure and to adopt the policies that it has adopted with respect to Alaska. Alascom also contends that the elasticities of demand that exist in the contiguous states do not exist in Alaska and that many residents of Alaska must use intrastate toll service to accomplish purposes for which contiguous states subscribers use exchange service. Alascom further contends that the average length of haul in Alaska is substantially greater than that for the contiguous states: 2,187 miles for Alaskan interstate compared with 529 miles for the con-

[30] In *Docket No. CC 80-286, supra*, the Commission indicated that changes to the Separations Manual relating to interexchange plant and expenses would be considered in a subsequent proceeding.

tiguous states in 1976 and 230 miles for Alaska intrastate compared with 50 miles for the contiguous states. Alascom contends that service to the bush is considerably more expensive than service to the rest of Alaska or to the contiguous states, citing toll revenue requirements per main telephone of $32,618 per year for the bush, $1,083 per year for the rest of Alaska and an estimated $296 per year for the Bell System. Furthermore, Alascom contends that exchange rates are two to four times higher for exchanges outside the four largest exchanges, even though an inferior grade of service may be being provided. Alascom contends that these unique characteristics make telecommunications service to Alaska riskier than the provision of such service in the contiguous states.

149. A close analysis reveals that most of these characteristics relate principally to the remote, isolated bush communities in Alaska, rather than to the entire state. The bush communities are undoubtedly remote, thinly populated, and costly to serve. In the balancing equation, therefore, telecommunications service offered by more than one entity would in many instances not be either economically feasible, nor would it necessarily maximize the social welfare. As we note elsewhere, in these circumstances, we believe entrants would be most likely to choose to extend telecommunications service to bush communities over resold Alascom facilities. However, we do not choose to preclude new entrants from applying to serve bush communities over separately constructed facilities. Even the potential that some new entrants may be authorized to serve the bush communities over separately constructed facilities provides incentives to Alascom to ensure that such service is provided as efficiently and economically as possible. This can result even though the demand characteristics of the bush indicate that some support mechanism may be necessary in the foreseeable future if reasonably priced telecommunications services to the bush are to be maintained. Any such applications will be scrutinized closely to determine that the public interest will be benefitted by the authorization of such duplicative entry.[31]

150. The non-bush communities do not share these same characteristics. Admittedly, the average length of haul for Alaskan interstate communications is longer than that for the contiguous states because of the geographic location of Alaska. This fact is offset through the use of primarily distance insensitive, satellite communications technology. Many of the communities served by mid-route stations are located along the coastal plain which has a considerably more moderate climate and are

[31] In *Docket No. CC 80–584, supra*, the Commission is considering the question of the appropriate ownership structure for bush earth station facilities. In that proceeding we are attempting to fashion a policy that will ensure continued service in as efficient and economic manner as possible. In a companion item, we are adopting a tentative decision providing for joint ownership of bush earth station facilities by Alascom and the appropriate bush exchange carrier in an effort to respond in the best manner possible to the telecommunication needs of the bush inhabitants.

more accessible than bush communities. While the costs for these non-bush communities are higher than the national average in many instances, they are not necessarily outside the range of reasonableness when compared with the ranges that exist in the contiguous states and the considerably higher average income of Alaskan residents compared to the national average. Finally, the non-bush Alaskan communities are similar to communities that may be located in rural or other non-metropolitan areas of the contiguous states. We are therefore unable to find that the record demonstrates any unique characteristics for the non-bush communities that would justify concluding that the Commission should adopt a special policy for Alaska that would restrict competitive entry in the Alaskan MTS-WATS market.

151. Alascom has requested that the Commission consider an SRI International study concerning options for exchange service to bush communities. While that study's discussion of the three options for providing improved exchange service to bush communities may be helpful in resolving some questions regarding telecommunications service to the bush, it is marginal in providing relevant information concerning the entry question. Since we anticipate that any competitor wishing to serve a bush community will do so through the resale of Alascom's facilities, we find no reason to expand the record in this proceeding, and Alascom's petition to have the SRI study considered is accordingly denied.

IX. CONCLUSION

152. In this proceeding, the Commission has undertaken to evaluate the Alaskan interstate MTS-WATS market in order to make a public interest determination on the question of whether a policy of open entry in that market should be adopted. In this connection, we concluded in Section V that the appropriate standard to apply is that which the United States Supreme Court set forth in *FCC v. RCAC*, and the United States Court of Appeals decisions that have applied that standard in a general rulemaking context. In this Section we shall synthesize the many factors discussed in this decision and make the ultimate public interest determination.

153. In making this public interest determination, the Commission must balance the benefits that will accrue from an open entry policy against any discernible detriments that may result from such a policy. A major portion of this decision has dealt with an evaluation of the possible benefits and the possible detriments that could arise from an open entry policy.

154. In the *Third Supplemental Notice*, the Commission considered the public interest benefits that an open entry policy in the MTS-WATS market could provide, both in the context of the contiguous states and for Alaska. In that decision, the Commission concluded that substantial

benefits would accrue from the discipline that competition would provide to the marketplace. Relying on experience gained from other telecommunications areas where competitive entry had been found to provide benefits to the public interest, the Commission concluded that an open entry policy would spur innovation and efficiency, and would lead to lower prices and more and better service. The Commission also found that it was reasonable to expect that competition and the elimination of barriers to entry would result in the provision of telecommunications services at the lowest possible cost, eliminate or reduce waste, make carriers more responsive to the needs and desires of consumers, and cause carriers to respond more efficiently to technological innovation. At that time, the Commission did not see any reason why these benefits would not be achieved in Alaska. Alascom's supplemental comments and rebuttal comments have not advanced any sustainable reason why these benefits will not be achieved in the Alaskan MTS-WATS market if an open entry policy is adopted. These benefits are important considerations to the Commission and will provide significant complimentary support to the Commission's regulatory policies regarding telecommunications common carriers. As we note in the *Third Supplemental Notice*, to deprive the residents of Alaska of these benefits would require a clear and convincing showing that the detriments of an open entry policy outweigh these benefits.

155. After reviewing the public interest benefits that the Commission foresees arising from competitive entry, we turned to evaluate the alleged detriments of such entry. The Commission reviewed Alascom's assertions of detrimental impact. The Commission also reviewed Alascom's claims that detrimental effects would result from the likelihood of intrastate competiton, trunking and network management inefficiencies, the loss of economies of scale, impacts on exchange rates, the need to deaverage private line rates as a result of an open entry policy in the MTS-WATS market, the impact of the consent decree in the AT&T/Justice Department antitrust suit, and allegations of unique conditions in Alaska.

156. From the analysis of Alascom's allegations, several conclusions can be drawn.

(a). Alascom's economic model is based on assumptions which, contrary to its assertions, are not conservative in any sense. In almost every instance, the assumption chosen was the assumption that would demonstrate the greatest amount of detrimental impact. Thus, Alascom's model can be seen as only an indication of an extreme worst case situation.

(b). Alacom's economic model fails to reflect the effect of gradual market penetration or of various cost factors resulting from this penetration. Thus, Alascom's impact showings must be signifi-

cantly discounted and can only be viewed as an extreme worse case scenario.

(c). Alascom's results run contrary to the experience that the Commission has observed in the contiguous states telecommunications market, an experience that supports our earlier findings and order in this Docket. The record does not support a finding that a competitive entrant will initially achieve dramatically more than the approximate two percent market share obtained by competitive entrants in the contiguous states.

(d). As a competitive entrant expands its network, some additional traffic diversion can be anticipated. Alascom's estimate of this additional diversion derived using their 4.42 multiplier must be discounted because of its flawed methodology. It is likely that NTIA's 2.2 multiplier is closer to the mark.

(e). The incremental market share an entrant would be expected to achieve, even given a complete network, is considerably less than the double digit traffic growth rate Alascom has projected for the next few years. Therefore the principal effect of entry will be that Alascom's rate of growth will be less than it would have been in a monopoly environment.

(f). There will be traffic growth for all of Alascom's services, both interstate and intrastate. While this traffic growth will occur in all services, the relative mix may show that the intrastate services constitute a slightly larger percentage of the growth than at present.

(g). As traffic increases to bush and mid-route communities (other than Juneau), the network will achieve unit cost reductions because of unexhausted economies of scale existing in that portion of the network.

(h). The relevant market for analyzing economies of scale is the total interexchange market, not just the interstate market. All significant economies of scale are achieved well below the 2000 circuit level used by Alascom. Examining the record data, making reasonable assumptions for intrastate facility usasge, and allowing for facility growth, the record indicates that the level of traffic needed to achieve significant economies of scale will be approached or exceeded for the three cities most likely to face competitive entry. Entrants to other Alaskan points will probably find it to their advantage to resell Alascom's facilities rather than to enter on separately constructed facilities because of apparently untapped economies of scale associated with existing technology and low traffic density on routes serving these points.

(i). Entry through the resale of Alascom's facilities is likely to occur, even if some entrants enter on separately constructed facilities. The impact on Alascom of resale entry is negligible.

(j). Local exchange rates will probably not rise because of competitive entry.

(k). Alascom is not precluded from deaveraging its private line rates. To the extent that such deaveraging will result in higher bush rates, MTS-WATS service at integrated rates exists to provide basic service to bush residents.

(l). Any trunking or network management inefficiencies resulting from an open entry policy will be minimal. We believe that increased network operating efficiencies resulting from competitive constraints will significantly offset such trunking inefficiencies. Furthermore, separately constructed facilities offer some redundant facility protection in case of emergency or natural disaster.

(m). The question of impact from the introduction of intrastate competition is one that is within the domain of the Alaskan Public Utilities Commission and is therefore not a proper matter for consideration by this Commission.

(n). all the benefits of competition cannot be achieved by only allowing new entrants to resell Alascom's facilities.

(o). The consent decree in the Department of Justice's antitrust suit against AT&T will not of necessity have any adverse effects on telecommunications service to Alaska. The proceedings considering any implementation plan selected will consider Alascom's arguments concerning potential effects on Alaskan telecommunications service.

(p). The unique characteristics of Alaskan telecommunications cited by Alascom are primarily attributable to bush areas. Characteristics of nonbush areas in Alaska are not significantly different from the characteristics existing in some locations in the contiguous states.

157. The above findings indicate that a policy of open entry in the Alaskan interstate MTS-WATS market will have very few detrimental effects. The most significant effect, the loss of a small percentage of market share, will only reduce the rate of growth that Alascom can be expected to achieve in the future and cannot be considered a *per se* detriment to the public interest. Other detriments that may result are offset by foreseen benefits of the constraining influences of competition, *i.e.*, the incentive to operate facilities more efficiently and the incentive to control costs. The record clearly does not support a finding that any adverse effects resulting from entry, if they occur, will be so significant as to "severely impair the economic base of existing carriers [such] that the industry would experience an incidence of failure so high as to impair provision of service to the public . . ." *Telocator Network of America v. FCC*, No. 78–2218 (D.C. Cir. Oct. 5, 1982), *supra* at 40.

158. Based on our experience, and an evaluation of the record in the light of the expertise the Commission has gained through the regulatory

process, we warrant that an open entry policy in the Alaskan interstate MTS/WATS market will produce benefits that outweigh any likely detriments of such a policy and conclude that such entry is in the public interest. An open entry policy in this instance is especially compelling because the denial of the benefits of competitive entry to residents of Alaska would deprive them of access to service options available in the contiguous states.

159. Alascom has urged that the benefits of entry can be obtained without the detriments by either leasing Alascom's private line facilities to competitive carriers with a surcharge to support statewide service or through allowing the resale of WATS to entrants to provide MTS-WATS equivalents. Alascom cites the Commission decision requiring international record carriers to utilize the tariffed facilities of existing carriers in extending their service to hinterland points, *International Record Carrier's Scope of Operations*, 76 FCC 2d 115, 137 (1980), as precedent for its position. It further contends that the record establishes that a subsidy is necessary to make Alaskan telephone rates affordable and that no mechanism presently exists to provide such subsidy. Until such subsidy mechanism is in place, Alascom argues it would be premature on the part of the Commission to authorize competitive entry on a basis other than one of its two options.

160. As we noted in discussing the benefits anticipated from entry, the benefits of entry are not entirely achieved through the resale of a monoply supplier's facilities. In fact, several of the more important benefits, *e.g.*, cost control and introduction of technological innovation, would not be affected at all if entry were limited to the resale of Alascom's facilities. As a review of Alascom's detrimental effect argument in Sections VII and VIII has indicated, the record does not demonstrate that significant detrimental effects will result if entry is authorized over separately constructed facilities. Accordingly, we can find no basis for adopting Alascom's suggestion that entry be limited to the resale of WATS or to the lease of its private line facilities at rates which would include a charge to help support the cost of state wide service.

161. Alascom's argument that a subsidy mechanism needs to be put into place before entry is authorized is equally unpersuasive. In fact, the mechanisms attendant to the rate integration policy applicable in Alaska provide an indirect mechanism for providing support to Alascom and thereby Alaskan ratepayers for the high cost of telephone service in Alaska. NTIA's proposal would only substitute a direct mechanism rather than indirect mechanism of rate integration, as the vehicle by which the subsidy was conveyed. We do not find that such a mechanism as that proposed by NTIA need be adopted at the present time. While an alternative support mechanism may be necessary if certain implementation options relating to access charges arising from Phase I of this

proceeding or from the implementation of the AT&T/Department of Justice consent decree, are adopted, consideration of an alternative, if it is deemed to be necessary, is more appropriate in conjunction with that particular proceeding. We find nothing in the record that indicates that the authorization of entry in the Alaskan MTS-WATS market today would produce any irreversable effects which justify limiting the degree of entry at this time.

162. Even if the Commission perceived that some detrimental effects would result in bush service through the adoption of an open entry policy, it is not clear that the restriction of entry would be the best solution to deal with those detrimental effects. As NTIA has indicated, there are instances where direct subsidies may be a more appropriate and more effective approach to dealing with such effects than is a policy of restricting entry. While the Commission foresees no substantial detrimental effects to bush inhabitants, and thus does not propose any special action regarding their services, the Commission has ample regulatory jurisdiction to deal with unforeseen consequences should they arise. It is clear, however, that choosing a remedy which would single out the residents of the state of Alaska to bear its burden is neither the only nor, necessarily, the preferred option. Indeed, a policy that denied the benefits of competition to the residents of a single state would raise serious problems of legality and equity. Moreover, if unforseen impacts do result for which the Commission does not have regulatory jurisdiction, a legislative solution could be sought to provide the necessary remedial action.

163. The open entry policy adopted in this order for the Alaskan interstate MTS-WATS market creates several obligations. Alascom and the Alaskan exchange carriers must provide interconnection arrangements to a carrier holding a valid Section 214 authorization, upon appropriate request. The interconnection policies applicable to the contiguous states shall be equally applicable to Alascom and Alaskan exchange carriers. The procedures allowing parties to petition for declaratory ruling and rulemaking proceedings and the complaint procedures in Sections 206–9 of the Act, 47 U.S.C. 206–9, are available to resolve any disputes that may arise regarding the terms or conditions of interconnection.

164. Accordingly, IT IS ORDERED, pursuant to Section 214(a) of the Communications Act of 1934, as amended, 47 U.S.C. 214(a), that the Commission finds an open entry policy for the Alaskan interstate MTS-WATS market to be in the public interest.

165. IT IS FURTHER ORDERED, that the petition filed by Alascom, Inc. requesting the Commission to hold further proceedings to consider the effects of the consent decree between the American Telephone and Telegraph Company and the Department of Justice and to consider

further comments concerning exchange service to bush communities IS DENIED.

166. IT IS FURTHER ORDERED, that Phase 2 of *Docket No. CC 78–72* is terminated.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

Table 1

Alascom's Estimates of the Impact of Competition
Base Year 1980

(millions of dollars)

	State	*Alaska/Conus*	*Foreign*	*Total Company*
(1) *No Competition*				
Revenue Requirement	64.1	145.0	5.5	214.6
Total Revenue	50.9	151.3	7.6	217.9
Surplus (Deficit) at 10% RR	(5.1)	6.3	2.1	3.3
Rate of Return	5.5%	11.3%	64.0%	10.3%
(2) *First Phase-Entrant Leases Facilities*				
Revenue Requirement	64.5	141.3	5.5	211.3
Total Revenue	59.0	146.1	7.6	212.7
Surplus (Deficit) at 10% RR	(5.5)	4.8	2.1	1.4
Rate of Return	5.2%	10.9%	65.3%	10.7%
(3) *First Phase-Entrant Uses Separate Facilities*				
Revenue Requirement	66.1	139.6	5.5	211.3
Total Revenue	59.0	144.8	7.6	211.4
Surplus (Deficit) at 10% RR	(7.1)	5.2	2.1	0.2
Rate of Return	4.1%	11.0%	60.3%	10.5%

Table 2

Alascom's Estimates of the Impact of Competition
Fifth Year 1985
First Phase

(millions of dollars)

(1) No Competition

	State		Alaska/Conus		All	Total
No Competition	*MTS*	*PL*	*MTS*	*PL*	*Other*	*Company*
Revenue Requirement	95.0	20.2	229.2	42.4	24.2	411.1
Billed Revenue	89.6	17.8	114.9	39.7	20.4	282.3
Settlement Rev.	-	-	114.3	-	-	114.3
Surplus (Deficit) at 13% RR	(5.4)	(2.4)	-	(2.7)	(3.8)	(14.3)
Rate of Return	8.4%	9.2%	13.0%	11.1%	1.6%	11.2%

(2) First Phase-Entrant Leases Facilities

Entrant Leases Facilities						
Revenue Requirement	96.0	19.8	207.0	57.5	24.2	404.4
Billed Revenue	89.6	17.8	100.0	50.9	20.4	278.6
Settlement Rev.	-	-	107.0	-	-	107.0
Surplus (Deficit) at 13% RR	(6.4)	(2.0)	-	(6.6)	(3.8)	(18.8)
Rate of Return	7.6%	9.8%	13.0%	9.5%	1.6%	10.7%

(3) First Phase-Entrant Uses Separate Facilities

Entrant Uses Separate Facilities						
Revenue Requirement	97.8	21.3	216.3	44.7	24.4	404.4
Billed Revenue	89.6	17.8	100.0	39.7	20.4	267.5
Settlement Rev.	-	-	116.3	-	-	116.3
Surplus (Deficit) at 13% RR	(8.2)	(3.5)	-	(5.0)	(4.0)	(20.7)
Rate of Return	6.5%	7.8%	13.0%	9.6%	1.2%	10.5%

Table 3

Alascom's Estimates of the Impact of Competition
Fifth Year 1985
Full Competition

(millions of dollars)

(1) No Competition

	State		Alaska/Conus		All	Total
No Competition	*MTS*	*PL*	*MTS*	*PL*	*Other*	*Company*
Revenue Requirement	95.0	20.2	229.2	42.4	24.2	411.1
Billed Revenue	89.6	17.8	114.9	39.7	20.4	282.3
Settlement Revenue	-	-	114.3	-	-	114.3
Surplus (Deficit) at 13% RR	(5.4)	(2.4)	-	(2.7)	(3.8)	(14.3)
Rate of Return	8.4%	9.2%	13.0%	11.1%	1.6%	11.2%

(2) Full Competition—Entrant Leases Facilities at $2700 per month

Revenue Requirement	99.2	18.5	131.1	109.0	24.1	381.9
Billed Revenue	89.5	17.8	49.2	89.0	20.4	265.9
Settlement Revenue	-	-	81.9	-	-	81.9
Surplus (Deficit) at 13% RR	(9.7)	(0.7)	-	(20.0)	(3.7)	(34.1)
Rate of Return	5.1%	11.8%	13.0%	7.6%	1.6%	8.8%

(3) Full Competition—Entrant Leases Facilities at $964 per month (Deaveraged private line rates)

Revenue Requirement	104.7	23.2	160.4	68.9	24.7	381.9
Billed Revenue	89.5	17.8	49.2	54.0	20.4	230.9
Settlement Revenue	-	-	111.2	-	-	111.2
Surplus (Deficit) at 13% RR	(15.2)	(5.4)	-	(14.9)	(4.3)	(39.7)
Rate of Return	1.6%	5.1%	13.0%	7.7%	0.2%	8.2%

(4) Full Competition—Entrant Uses Separate Facilities

Revenue Requirement	107.0	25.1	172.3	52.5	25.0	381.9
Billed Revenue	89.5	17.8	49.2	39.7	20.4	216.6
Settlement Revenue	-	-	123.1	-	-	123.1
Surplus (Deficit) at 13% RR	(17.5)	(7.3)	-	(12.8)	(4.6)	(42.2)
Rate of Return	1.2%	4.0%	13.0%	5.6%	0.05%	7.9%

Minority Ownership
Minority Ownership of Broadcast Facilities

Commission will now consider issuing tax certificates and authorizing distress sales in transfers to limited partnerships where the minority general partner owns at least twenty percent of the b/c entity. Additionally, the Commission will consider issuing tax certificates to shareholders that divest their interest in a minority-controlled entity when divestiture furthers minority ownership.
—*Minority Ownership in B/cing*
Gen. Docket No. 82–797

FCC 82–523

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting	Gen. Docket No. 82–797

POLICY STATEMENT AND NOTICE OF PROPOSED RULE MAKING

Adopted: December 2, 1982; Released: December 13, 1982

BY THE COMMISSION: CHAIRMAN FOWLER ISSUING A SEPARATE STATEMENT.

Introduction

1. The Commission has traditionally considered the under-representation of minority points of view over the airwaves as detrimental to minorities[1] and the general public. Accordingly, we have taken steps to enhance the ownership and participation of minorities in the media, with the intent of thereby increasing the diversity in the control of the media

[1] For purposes of this statement, the term "minority" inlcudes American Indians or Alaskan Natives, Asians and Pacific Islanders, Blacks and Hispanics. 47 U.S.C. § 309(i)(3)(C).

and thus diversity in the selection of available programming, benefitting the public and serving the principle of the First Amendment.[2] This *Policy Statement* will deal with our continuing concern with enhancing minority ownership of broadcast properties.

Background

2. To ensure that programming reflects and is responsive to minorities' tastes and viewpoints, the Commission has promulgated equal employment opportunity regulations requiring licensees to institute affirmative action programs,[3] and ascertainment procedures requiring licensees to conduct discussions with significant groups, including minority leaders, in the community.[4] However, it became apparent that in order to broaden minority voices and spheres of influence over the airwaves, additional measures were necessary. In our *Statement of Policy on Minority Ownership of Broadcasting Facilities* (hereinafter cited as the *1978 Policy Statement*),[5] we noted that:

> While the broadcasting industry has on the whole responded positively to its ascertainment obligations and has made significant strides in its employment practices, we are compelled to observe that the views of racial minorities continue to be inadequately represented in the broadcast media. . . . Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience.

3. Thus, in 1978, we articulated the important policy goal of encouraging minority ownership of broadcast facilities, and implemented that policy by announcing the availability of tax certificates and distress sales to minority-owned or controlled enterprises.[6] Tax certificates are authorized, under 26 U.S.C. § 1071, in sales or exchanges of broadcasting properties where the Commission determines that such sales or exchanges are "necessary or appropriate to effectuate a change in a policy

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[2] The First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. . . ." *Associated Press* v. *United States*, 326 U.S. 1, 20 (1943).

[3] *See* 47 C.F.R. §§ 73.125, 73.301, 73.599, 73.680, and 73.793; *see also Nondiscrimination in Employment Practices of Broadcast Licensees*, 13 F.C.C. 2d 766, 774 (1968). It should be noted that the Commission recently extended its equal employment opportunity regulations to two newly authorized services, low power television, *Low Power Television*, 47 Fed. Reg. 21468 (May 18, 1982), and direct broadcast satellite systems, *Report and Order*, 47 Fed. Reg. 31553 (July 21, 1982). *See also Nondiscrimination Employment Practices of Broadcast Licensees*, 54 F.C.C. 2d 354, 356 (1975).

[4] *Ascertainment of Community Problems by Broadcast Applicants*, 57 F.C.C. 2d 418, 419 (1976). We should point out that while we eliminated formal ascertainment requirements for commercial radio stations in our radio deregulation proceeding (BC Docket No. 79-219), we nevertheless indicated that broadcasters could not engage in intentional discrimination against minority groups in their selection of issues to be addressed with programming. *Deregulation of Radio*, 84 F.C.C. 2d 968, 978 (1981). We cautioned that such discrimination would be viewed with "utmost gravity." *Id.* at 1089.

[5] 68 F.C.C. 2d 979, 980-981 (1978).

[6] For a more detailed discussion of tax certificates, *see* paragraph 13, *infra*, and of distress sales, *see* paragraph 19, *infra*.

of, or the adoption of a new policy by the Commission with respect to the ownership and control of radio broadcasting stations. . . ." A tax certificate enables the seller of a broadcast station to defer the gain realized upon a sale, either by: (1) treating it as an involuntary conversion, under 26 U.S.C. § 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property, under 26 U.S.C. § 1071, or both. The distress sale policy allows broadcasting licensees whose licenses have been designated for revocation hearing, prior to the commencement of a hearing, to sell their station to a minority-owned or controlled entity, at a price "substantially" below its fair market value. A licensee whose license has been designated for hearing would ordinarily be prohibited from selling, assigning or otherwise disposing of its interest, until the issues have been resolved in the licensee's favor.[7] Thus, extension of the tax certificate and distress sale policies fosters minority ownership by providing broadcast licensees with an incentive to transfer their interests to minority-owned or controlled entities.[8]

4. Minority participation in broadcasting was also promoted through other means. The Court of Appeals determined that minority ownership of and participation in broadcasting should be encouraged and afforded merit in a comparative hearing context, recognizing the "connection between diversity of ownership of the mass media and diversity of ideas and expression required by the First Amendment."[9] Additionally, the Commission has indicated that waivers of the trafficking rule[10] and the multiple ownership rules[11] would be considered and might be appropriate where minority ownership is thereby increased.[12] Moreover, we have in fact waived our requirements[13] and awarded comparative merit to minority applicants[14] in the interest of promoting minority entrepreneurship.

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[7] *Bartell Broadcasting of Florida, Inc.*, 45 RR 2d 1329, 1331 (1979).

[8] We should point out that licensees whose licenses have been designated for hearing may not avail themselves of a tax certificate in addition to a distress sale. *Blue Ribbon Broadcasting, Inc.*, 76 F.C.C. 2d 429, 431 n. 6 (1980).

[9] *TV 9, Inc.* v. *FCC*, 495 F. 2d 929, 937–938 (D.C. Cir. 1973) *cert. den.*, 418 U.S. 986 (1974). Additionally, the Court of Appeals noted that:

> The fact that other [licensee] applicants propose to present the views of such minority groups in their programming, although relevant, does not offset the fact that it is upon ownership that public policy places primary reliance with respect to diversification of content, and that historically has proven to be significantly influential with respect to editorial comment and the presentation of news. *Id.* at 938.

[10] 47 C.F.R. §§ 73.35, 73.240 and § 73.636.

[11] 47 C.F.R. § 73.3597.

[12] *Minority Ownership of Broadcasting Facilities*, 69 F.C.C. 2d 1591, 1596–1597 (1978). However, given the myriad of potential factual situations and the competing policies underlying those rules, we declined to specify the kind of cases where waivers would be granted.

[13] *E.g.*, in *Atlass Communications, Inc.*, 61 F.C.C. 2d 995, 997 (1976), the allocation requirements were waived and a Black-owned daytime broadcast station was permitted to operate at night.

[14] *E.g.*, in *Rosemor Broadcasting, Co., Inc.*, 54 F.C.C. 2d 394, 418 (1975), merit was awarded to an applicant whose owner principals were minority women who were also to be involved in the management of the proposed station.

5. Since 1978, we have approved 27 distress sales and 55 tax certificates, which have contributed significantly to increased minority ownership in broadcasting. However, we consider the ever-present "dearth of minority ownership" in the telecommunications industry to be a serious concern, and we are committed to further encouraging minority entry into the industry. We therefore, created the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications (Advisory Committee) for the purpose of exploring means to facilitate minority ownership of telecommunications properties.[15]

6. This *Policy Statement* emanates from recommendations pertaining to the acquisition of broadcasting facilities that were proposed by the Advisory Committee. The Advisory Committee's recommendations were primarily directed toward ameliorating existing Commission policies which tend to inhibit minority entrance into the broadcasting market. Specifically, the Committee recommended that the Commission:

> (1) clarify the *1978 Policy Statement* to indicate that (minority) general partners, holding more than a twenty percent interest in limited partnerships, exercise sufficient control and satisfy the test for tax certificates and distress sales;
>
> (2) adopt a "capitalizing feature" for tax certificates to enable share holders with less than a controlling interest in a minority-controlled broadcasting entity to sell their interest and become eligible for a tax certificate:
>
> (3) expedite the handling of distress sale petitions by delegating authority to the Mass Media Bureau to process and grant those petitions that meet Commission standards and are consistent with Commission policies;
>
> (4) expand the rights of seller-creditors, including the right of reversionary interests in broadcast licenses, in seller financed transactions;
>
> (5) amend the multiple ownership rules to permit increased equity participation by venture capital companies in the acquisition of telecommunications properties by minority entrepreneurs;[16] and
>
> (6) amend the multiple ownership rules to permit established broadcasting entrepreneurs to acquire equity interests in minority-controlled entities.[17]

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[15] The Advisory Committee was created in September of 1981, and was comprised of leaders in the financial, telecommunications, private and public sectors. For a list of Advisory Committee members, *see* Appendix A.

[16] Specifically, the Advisory Committee recommended that the multiple ownership rules (*see* note 11, *supra*) be amended to either exempt or raise the "reportable interest" level of venture capital companies (including private venture capital investment companies and small business investment companies).

[17] As an alternative, the Advisory Committee recommended that "the established multiple owner [be allowed] to acquire the additional prohibited property, provided he assisted a minority in the financing of another comparable venture." Such "joint venturing" was deemed desirable, in that experienced broadcasters afford managerial and technical expertise, and may provide additional financing to minority entrepreneurs just entering the complex field of telecommunications.

The Advisory Committee noted that "financing has remained the single greatest obstacle" to minority entry into the telecommunications industry. Therefore, the Advisory Committee's recommendations mainly focused upon enhancing minority enterpreneurship by increasing their opportunities to attract investors in their enterprises, and thus secure financing.

We believe it is appropriate to defer immediate consideration of items (5) and (6) above, the Advisory Committee's recommended amendments to our multiple ownership rules. We are in the process of undertaking a comprehensive review of those rules, and we believe it is more productive at this point to consider any minority ownership implications of these rules in the context of our overall review.

Discussion

Limited Partnerships

7. As previously stated, to foster minority ownership of broadcasting facilities, in 1978 we extended the availability of tax certificates and distress sales to minority entities. At that time, we indicated that the purchasing entity would be deemed qualified for purposes of tax certificates where the minority ownership interest in the entity exceeded fifty percent or was controlling.[18] The same ownership requirement has since been applied to distress sales.[19] By so establishing the ownership requirement, we did not intend to preclude from consideration other cases where "minority involvement is significant enough to justify" tax certificates or distress sale treatment. However, the requirement has evolved into a rather rigid standard from which we have departed but once.[20] In *William M. Barnard,* we determined that issuance of a tax certificate was justified under the circumstances, because minority group members owned, directly or indirectly, 45.5 percent of the partnership interest in the purchasing entity, and the sole general partner, who had the "exclusive authority to manage and control" its affairs, was a minority individual who owned an 11.4 percent interest individually as well as a 52.4 percent interest in a corporation with a 25 percent limited partnership interest in the entity. By so issuing the tax certificate, we recognized the fact that a limited partnership, by its nature, vests complete control over the station's affairs in the general partner. We also recognized that where the

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[18] *1978 Policy Statement, supra,* at 983, n. 20.

[19] *E.g., Grayson Enterprises, Inc.,* 47 RR 2d 287, 294 (1980).

[20] For instance, in *Long-Pride Broadcasting Co.,* 48 RR 2d 1243 (1980), we denied the issuance of a tax certificate in connection with the sale of a broadcast station, where the minority owned 45 percent of the purchasing entity's stock, and was able to vote an additional 10 percent through a voting trust. We stated that the minority's involvement was not significant enough to justify issuance of a tax certificate, alluding to the "tenuous nature" of voting trusts. *Id.* at 1245.

general partner is a minority individual with a substantial, but not controlling, equity interest in the entity, sufficient minority involvement has been demonstrated to justify issuance of a tax certificate. We cautioned, however, that "serious concern would arise where tax certificates are sought for sales to limited partnerships in which minorities exercise control but have no substantial ownership interest."

8. The Advisory Committee recommended that the Commission explicitly recognize the unique nature of limited partnerships. The Advisory Committee requested the Commission to indicate that in cases where the general partner is a minority individual and owns more than a 20 percent interest in the broadcasting entity, there exists sufficient minority involvement to justify favorable application of the Commission's tax certificate and distress sale policies.

9. Limited partnerships are creatures of statute. While the laws may vary from jurisdiction to jurisdiction, the general scheme—in terms of constitution, purpose and effect—remains the same.[21] Essentially, a limited partnership is a business enterprise composed of: (1) one or more general partners who exercise complete managerial control over the business' affairs and who are personally liable for the partnership debts; and (2) one or more limited partners who invest capital and share in the profits, but do not exercise any managerial control and do not incur any personal debts beyond their initial capital contribution.[22] Limited partnerships are designed to encourage trade by uniting parties who possess capital to invest with parties who are willing to expend their energies and efforts actively running a business.[23] Since complete control and management rests with the general partner, the limited partner's investment is akin to that of a corporate shareholder who has limited liability and lacks a voice in the operation of the enterprise.[24]

10. In *Anax Broadcasting, Inc.*,[25] we determined that the failure to adequately identify the limited partners in a construction permit application was insignificant and did not require dismissal of the application because, under the limited partnership agreement, the limited partners had only a passive interest in the enterprise (*i.e.*, they would not participate in the station's daily operations).[26] We also stated that the transfer of additional shares to the general partner (which increased his ownership

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[21] 68 Corpus Juris Secundum, Partnership, § 449–450.

[22] *Evans* v. *Galardi*, 546 P. 2d 313, 317 (1976).

[23] *Id.* at 318.

[24] *Hirsch* v. *DuPont*, 396 F. Supp. 1214 (S.D. Calif. 1975), *affirmed*, 553 F. 2d 750 (1975); *Lichtyger* v. *Franchard Corp.*, 223 N.E. 2d 869, 873 (1966). In fact, any active participation in the enterprise's affairs would remove the limited partner's shelter and subject him to personal liability as a general partner. *Lichtyger* v. *Franchard Corp.*, *supra*, at 873; *Toor* v. *Westover*, 200 F. 2d 713, 715 (9th Cir. 1953), *cert. den.*, 345 U.S. 975 (1953).

[25] 49 RR 2d 1589 (1981).

[26] *Id.* at 1593–1594.

interest from 28 percent to 99 percent) was insignificant, for "regardless of whether the general partner owned a 28 percent interest in the applicant or a 99 percent interest," the general partner would still have "total operating control."[27]

11. Thus, in *Anax Broadcasting, Inc.* and *William M. Barnard*, we already have acknowledged the unique nature of limited partnerships. Accordingly, we are adopting the Advisory Committee's recommendation. We will henceforth consider issuing tax certificates and authorizing distress sales in transfers to limited partnership where the general partner, or partners, owns more than 20 percent of the broadcasting entity and is a member, or members, of a minority group.[28] We are, thus, explicitly recognizing the "significant minority involvement" which exists by virtue of a minority general partner's ownership interest and complete control over a station's affairs.[29] Moreover, we are increasing minority opportunities by enabling minority entrepreneurs to capitalize their broadcasting ventures by attracting and utilizing the investments of others to a greater extent. Although we are considering such limited partnerships for tax certificate and distress sale purposes, we should make clear that in order to avoid "sham" arrangements, we will continue to review such agreements to ensure that complete managerial control over the station's operations is reposed in the minority general partner(s).

Tax Certificates as Creative Financing Mechanisms

12. As noted previously, a tax certificate enables the seller to defer taxes on capital gains, and thus provides an incentive to transfer a broadcast station to a minority-owned or controlled entity. Moreover, a "tax certificate effectively subsidizes the bargaining position of minority entrepreneurs seeking to enter the telecommunications marketplace" because a "tax certificate is effective only in those situations where the seller's capital gains savings exceeds the difference in purchase price offered by a non-minority and a minority purchaser."[30] While the Advisory Committee recognized that tax certificates have successfully contributed to the acquisition of broadcast properties by minorities,[31] it envisioned a more expansive approach to the administration of tax certificates.

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[27] *Id.* at 1593.

[28] The minimal ownership requirement of 20 percent was recommended by the Committee as reflecting the realities of the financial and business world. We accept their recommendation, in this regard, as a realistic threshold.

[29] We have generally found "control" to be in those who have authority to determine the basic policies of a station's operations, including programming, personnel and financial matters. *Southwest Texas Broadcasting Council*, 85 F.C.C. 2d 713, 715 (1981).

[30] *The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications*, pp. 8–9 (May 1982) (hereinafter cited as the *Final Report*).

[31] *See* paragraph 5, *supra*.

13. In essence, the Advisory Committee recommended that the Commission adopt a policy whereby shareholders in a minority controlled broadcasting entity would be eligible for a tax certificate upon the sale of their shares, provided their interest was acquired to assist in the financing of the acquisition of a broadcast facility. According to the Advisory Committee:

> This expansion of the tax certificate would enable minority entrepreneurs to attract investors before the transaction is completed, when securing financing is critical, by promising them significant capital gains deferral on the sale of their interest to the controlling shareholder.
>
> [Additionally], this "capitalizing feature" of the tax certificate would enable investors to sell their interest at any time and apply for a tax certificate. Therefore, the capitalizing feature would also serve as a major incentive for investment in minority businesses *after* the entity has acquired a broadcast property, thereby stabilizing the capital base of existing minority-owned or controlled businesses.[32]

By so broadening the tax certificate policy, the pressing dilemma minority entrepreneurs face—the lack of available financing to capitalize their telecommunications ventures—is met and a creative tool of financing is created. Additionally, the Advisory Committee states that this would allow "minority entrepreneurs to share more meaningfully in the benefits of Section 1971."[33]

14. Section 1071 of the Internal Revenue Code confers broad jurisdictional powers upon the Commission, normally reserved to the Treasury, to issue tax certificates.[34]The Commission's grant of a tax certificate is solely dependent upon its finding that a sale or exchange of property is "necessary or appropriate" to effectuate the adoption of a new policy or a change in an existing policy relating to the ownership and control of broadcasting properties. The Commission establishes policies in the first instance and makes the determination as to whether a particular transaction furthers a specific policy. In the past, the Commission's strict construction of the statutory term "necessary or appropriate" led it to require a showing of the "involuntary" nature of the divestiture,[35] and later to require a showing of the "causal relationship" between the divestiture and the specific Commission policy, as a condition for the issuance of a

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[32] *Final Report*, *supra* at 8.

[33] *Id.* at 9.

[34] Blake and McKenna, *Section 1071: Deferral of Tax on FCC Sanctioned Dispositions of Communications Properties*, 36 Tax L. Rev. 101, 103 (Fall 1980).

[35] *See Public Notice*, No. 36410, FCC 56–919 (September 27, 1956). *But see Jefferson Standard Broadcasting Co.* v. *FCC*, 305 F. Supp. 744, 748–749 (W.D.N.C. 1969), where the Court determined that Congress did not intend to restrict Section 1071 to involuntary divestitures and ordered the Commission to issue a tax certificate. The Court stated that "[e]ntitlement to the tax deferment certificate contemplated in Section 1071 is not dependent on whether the sale was 'involuntary' or was directly ordered by court or by the Commission." *Id.* at 749.

tax certificate.[36] The Commission has since abandoned its strict construction of Section 1071 by recognizing that voluntary divestitures that effectuate specific ownership policies are "appropriate," and by eliminating the "causal relationship" requirements.[37] In 1978, we further expaneded our tax certificate policy by announcing the availability of such certificates in transactions that further minority ownership.[38]

15. In accordance with the Advisory Committee's basic recommendations, we believe that a further expansion of our tax certificate policy to include the Advisory Committee's recommendation (See para. 14, *supra*) will facilitate initial investments in minority-controlled stations; will contribute toward the stabilization and improvement of their operation, once established; and ultimately will serve to increase minority ownership of broadcast properties. The use of tax certificates as creative financing tools will facilitate significantly minority entrepreneurs' access to necessary financing, thus effectuating the important policy of promoting minority ownership. Accordingly, we are expanding our tax certificate policy in this area.

16. Generally, to be eligible for a tax certificate, such transactions must not reduce minority ownership of and control in the entity below 51 percent.[39] However, our expansion of the tax policy differs in some respects from that contemplated by the Committee. First, tax certificates will only be available to initial investors who provide "start-up" financing, which allows for the acquisition of the property, and those investors who purchase shares *within the first year* after license issurance, which allows for the stabilization of the entity's capital base. (The Committee's recommendations did not include any time limitation.) We believe that to extend the availability of tax certificates beyond those shareholders would invite abuse and overprotect minority entrepreneurs against the realities

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[36] In this regard, the Commission stated that issuance of a tax certificate was dependent upon its finding as to whether there was a causal relationship between the adoption of a new Commission policy and the sale in question, and whether issuance of the certificate was "necessary or appropriate" to effectuate the new policy. Pertinent factors in determining whether a sale was "necessary or appropriate" included: (1) the occurence of the sale within a reasonable time span of the adoption of a new policy, such as one license period; (2) a showing that the policy was a significant factor in the sale; and (3) a showing that the sale was consistent with our general experience in the broadcast field. *Issuance of Tax Certificates*, 19 RR 1831, 1832 (1970).

[37] *In re Issurance of Tax Certificates*, 59 F.C.C. 2d 91 (1976).

[38] Prior to 1978, the tax certificate policy only applied to transfers involving multiple ownership. We recently announced our intent to limit the award of tax certificates to those properties whose sale directly effectuates Commission policy. This revised policy was prompted by the difficulties attaching to the application of the 1976 policy to divestitures arising in the context of our cable television cross-ownership rules, 47 C.F.R. 76.501 *et seq*. We do not anticipate that this revised policy will affect the conferring of tax certificates as creative financing mechanisms to facilitate minority ownership.

[39] By so requiring remaining 51 percent minority control, we do not mean to preclude consideration of cases where "minority involvement would have been significant enough" to justify the issuance of a tax certificate in the first instance. (*See* paras. 8 and 12, *supra*).

of the marketplace which all licensees must face. Additionally, the identity of the divesting shareholders, as well as the identity of those purchasing the divested shares, is not material, because the goal behind expanding the tax certificate policy is to provide minorities opportunities to procure financing and thereby increase minority ownership of broadcasting stations.[40]

17. Generally, tax certificates have been issued only upon completion of sale transactions. However, upon request we have issued advisory opinions on whether a tax certificate would be forthcoming once the sale or exchange occurred.[41] Given the inherent uncertainties attendant on negotiations and various potential factual circumstances, we still would be reluctant to issue tax certificates *prior* to the *actual* sale or exchange. Thus, we are adopting the Committee's proposal but limiting it to indicate that tax certificates will be available upon the actual divestiture of shares by investors who initially purchase shares in the broadcasting entity or purchase shares within one year after the issuance of a broadcast license, and who show that their capitalization either enabled a minority owned or controlled entity to acquire a broadcast property or provided necessary start-up financing. If parties have uncertainties regarding the tax consequences of prospective transactions, they always can, of course, request a declaratory ruling from the Commission. Such requests will be handled as expeditiously as possible.

Expedited Processing of Distress Sales

18. The Committee recommended that the Commission delegate authority to the Mass Media Bureau to process and grant distress sale petitions that are consistent with established Commission policy. As we previously noted, our distress sale policy marks a departure from our long established practice of prohibiting a licensee in a renewal or revocation hearing from disposing of its interest prior to the resolution of issues in its favor.[42] In 1978, we stated that "applications by parties seeking relief under our . . . distress sale policies can be expected to receive expeditious processing." However, to safeguard against possible abuse and to ensure that our policy objectives were being met, the Commission stated

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[40] For example, assume shareholder A, a Black person, owns 70 percent of Corporation X, while shareholders B and C each own 15 percent. If B and C purchased their shares before or within one year after acquisition of a license, they can later sell their interest and be eligible to receive a tax certificate. Whether B and C and/or the subsequent buyers are racial or ethnic minorities would be inconsequential—what is relevant is that B and C provided necessary financing enabling a minority-owned or controlled entity to acquire and start a broadcasting station, thereby increasing minority ownership in the market. So long as the entity is minority controlled, it is immaterial whether minority members own 51% or 91%.

[41] *William S. Green*, 59 F.C.C. 2d 78, 79 (1979); *J.A.W. Iglehart*, 38 F.C.C. 2d 541, 542 (1972).

[42] *1978 Policy Statement*, *supra* at 983.

that it (rather than the staff) would administer distress sales on a case-by-case basis.[43]

19. The evolving nature of our distress sale policy necessitated such an individualized approach. However, we believe that the subsequent case law has established sufficient safeguards and standards by which prospective distress sale petitions may be reviewed and processed by our staff.[44] Therefore, to further facilitate minority ownership and expedite the handling of distress sale petitions, we are delegating authority to the Mass Media Bureau to process and grant those petitions that are *consistent* with established Commission policy and do *not* involve novel questions of fact, law or policy in the area of distress sales.

NOTICE OF PROPOSED RULE MAKING—Seller-Creditors' Rights

20. Given the current economic conditions of the telecommunications market,[45] the Committee stated that seller financing in station transfers has become a prevalent practice and should be encouraged, particularly since it is obviously one of the ways that minorities can obtain broadcasting properties.[46] Although a seller-creditor currently may take a security interest in the station's physical assets or stock in the corporate licensee[47] as protection against the purchaser's possible default, the Committee believed that seller-financed transfers further would be stimulated if the seller were afforded additional protection. Specifically, the Committee recommended that in those cases where the seller provides financing, the seller-creditor's rights be expanded to include a right of reversionary interest in the license.

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[43] *Id.* at 983.

[44] We have applied the tax certificate standard (minority ownership which exceeds 50 percent or constitutes a controlling interest—*Policy Statement*, *supra* at 983 n. 20) to distress sales. We have also established procedures for determining the adequacy of a distress sale price. *Grayson Enterprises, Inc.*, 77 F.C.C. 2d 156, 163–164 (1980); *Northland Television, Inc.*, 72 F.C.C. 2d 51–54–56 (1979).

[45] The Committee cited two structural problems in the marketplace that affect "*all* broadcasters, particularly small ones," in obtaining capital as including:

> (1) The current high interest rates whch reduce the comfort level of lenders in all investments (thereby increasing the level of equity required to attain a given capitalization), and which consume cash flow (reducing immediate return on equity); and
>
> (2) The fact that presently broadcasting is not providing a high enough return on equity invested to attract venture capital participation. *Final Report*, *supra* at 25–27.

[46] According to the Committee, "[i]n 1981, of the 487 station transfer filed with the FCC, two-thirds involved some form of seller financing." *Final Report*, *supra* at 33 (citing *Broadcast Investor*, April 22, 1982, Issue No. II, p. 1, Paul Kagan Associates, Inc., Carmel, Calif.).

[47] The Commission already recognizes and approves of contracted arrangements, whereby 50% or more of the stock is pledged, where the contract (1) provides that the licensee-borrower retains the voting rights; and (2) provides for a public or private sale which would ensure that the licensee's equity is protected. Moreover, 49.99% of the stock (representing the absence of positive or negative control) currently may be foreclosed, without prior Commission approval under 47 U.S.C. § 310.

21. There is a longstanding principle, followed by the Commission[48] and affirmed by the United States Supreme Court,[49] that a broadcast license is a valuable, though limited, privilage to utilize the airwaves, rather than a property right. As such, the license has not been subject to a reversionary interest, a mortgage, a lien, a pledge or any other form of security.[50] This principle appears to be dictated by the Communications Act of 1934, as amended. Specifically, 47 U.S.C. § 301 states, in pertinent part, that it is the purpose of the Act "to provide for the use of [radio transmissions] channels, *but not the ownership thereof,* by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions and period of the license . . ." (Emphasis added). Additionally, 47 U.S.C. § 304 requires an applicant for a license to "waive any claims to the use of any particular frequency . . . because of the previous use of the same, whether by license or otherwise;" and 47 U.S.C. § 309 (h) requires a station license to contain the following statement: "The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated by the license beyond the term thereof. . . ." Finally, 47 U.S.C. § 310 (d) requires Commission approval prior to the transfer, assignment or disposal of rights in a construction permit or station license. The correlary Commission rule is contained in 47 C.F.R. § 73.1150 which prohibits agreements, express or implied, that allow a licensee to: (1) retain an interest in the license; (2) claim a right to future assignment of the license; or (3) reserve a privilege to use the broadcast facilities, upon the sale or transfer of its interest in the broadcast station.[51]

22. We recognize that seller financing may facilitate the sale of a broadcast property, but limitations have been imposed on the types of

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[48] *See, eg., Churchill Tabernacle* v. *FCC*, 160 F. 2d 244 (D.C.Cir. 1947); *Radio KDAN, Inc.*, 11 F.C.C. 2d 934 (1968); *Yankee Network, Inc.*, 13 F.C.C. 1014 (1949), *Bonanza Broadcasting Corp.*, 11 RR 2d 1072 (1967); *Alabama Polytechnic Institute*, 7 F.C.C. 225 (1939); *Associated Broadcasters Inc., 6* F.C.C. 387 (1938).

[49] *Ashbacker Radio Corp.*, v. *FCC*, 326 U.S. 327, 331–32 (1945); *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940).

[50] For instance, in *Radio KOAN, Inc.*, 13 RR 2d 100 (1968), the Commission declared a contractual provision that purported to mortgage and create a reversionary interest in the license as *void ab initio*. The Commission stated, "The extraordinary notion that a station license issued by this Commission is a mortgageable chattel in the ordinary commercial sense is untenable.:" *Id.* at 101. Likewise, the Commission has prohibited the sale or transfer of a bare license. *Bonanza Broadcasting Corp.*, 11 RR 2d 1072, 1073 (1967); *Donald L. Horton*, 11 RR 2d 417, 419–420 (1967).

[51] Specifically, § 73.1150 provides: (a) in transferring a broadcast station, the licensee may retain no right of reversion of the licene, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever; (b) no license, renewal of license, assignment of license or transfer of control of a corporate licensee will be granted or authorized if there is contract, arrangement or understanding, express or implied pursuant to which, as consideration or partial consideration for the assignment or transfer, such rights, as stated in paragraph (a) of this section, are retained.

security interests sellers can retain as part of the financing arrangements. We believe it appropriate to inquire as to whether certain limitations could be removed, consistent with the provisions of the Communications Act, so as to further encourage the use of this financing tool, particularly where the transaction would enhance minority ownership of the media of mass communications. Accordingly, interested parties are invited to address themselves to the type of security interest that can be retained by a seller-creditor; whether that interest can or should include a reversionary interest in the license itself; and the legal process, if any, that should be required before the creditor could exercise its reversionary interest.

Conclusion

23. The Commission issues this *Policy Statement* to expand and reaffirm the *1978 Policy Statement* with the hope that the policies initiated herein will offer meaningful new opportunities to increase minority ownership. Accordingly, this *Policy Statement* is but the latest step in an ongoing effort. The Commission will revisit these policies to assess their effectiveness and, if necessary, explore additional policies and procedures to remedy the underrepresentation of minorities in media ownership. Henceforth we will consider:

(1) Issuing tax certificates and authorizing distress sales in transfers to limited partnerships where a minority general partner (or partners) owns more than 20 percent of the broadcasting entity; and

(2) Issuing tax certificates to shareholders upon divestiture of their interest in minority controlled broadcasting entities, where divestiture furthers minority ownership.

Moreover, to expedite the handling of distress sale petitions, we are delegating authority to the Mass Media Bureau to process and grant those petitions which are *consistent* with Commission precedent and policy. Finally, we are instituting a rule making proceeding, subject to public notice and comment, with a view toward expanding seller-creditors' rights and protections.

Regulatory Flexibility Act—Initial Analysis

I. Reason for action:

Since seller-financed transactions represent one method by which minorities may acquire broadcast facilities, we are proposing to examine the protections currently available to seller-lenders with a view towards possibly expanding their protection and thereby stimulating such transactions.

II. The objective:

To encourage seller financed transactions as a means to facilitate the transfer of broadcast properties.

III. Legal basis:

Authority to consider expanding seller-creditors' protection is premised upon 47 U.S.C. § 310 (d) which enpowers the Commission to approve of transfers.

IV. Description of potential impact and number of small entities affected:

In general, the impact of affording licenses-sellers additional protections may encourage seller-financing and thus may assist new entrants into the broadcasting industry. Established, as well as potential, broadcasters may be affected.

V. Record keeping and other compliance requirements:

The proposal would impose no new record keeping burdens for broadcasters.

VI. Federal rules which overlap, duplicate or conflict with these rules

None.

VII. Any significant alternatives minimizing impact on small entities and consistent with stated objectives:

The expansion of seller-creditor's protections would not impose any burdens upon small entities, rather it may increase small entities' opportunities to enter the broadcasting industry.

Filing Responses to This Notice

24. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person

who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, tha written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally,* Section 1.1231 of the Commission's Rules and Regulations, 47 C.F.R. § 1.1231.

25. Pursuant to applicable procedures set out in Sections 1.4, 1.415 and 1.419 of the Commission's Rules and Regulations, 47 C.F.R. § 1.4, § 1.415 and § 1.419, interested parties may file comments on or before March 14, 1983 and reply comments on or before March 29, 1983. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

26. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, 47 C.F.R. § 1.419, an original and 5 copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

27. For further information contact Ava H. Berland, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico *Secretary*

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